

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 13-74398-reg

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5 In the Matter of:

6 STANLEY ABRAHAM AND AMY ABRAHAM,

7 Debtors.

8 - - - - - x

9 ADV. PROC. NO.: 13-08165-reg

10 In the Matter of:

11 JANET STUART,

12 Plaintiff,

13 v.

14 STANLEY ABRAHAM,

15 Defendant.

16 - - - - - x

17 United States Bankruptcy Court

18 Alfonse M. D'Amato Federal Courthouse

19 290 Federal Plaza

20 Central Islip, New York 11722

21 March 10, 2015

22 10:05 a.m.

23 B E F O R E :

24 HON ROBERT E. GROSSMAN

25 U.S. BANKRUPTCY JUDGE

1 [2] Trial on ADJ Summons and Notice of Pre-Trial Conference

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25 Transcribed by: Sherri L. Breach

1 A P P E A R A N C E S :

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7 BY: JOEL GAFFNEY, ESQ.

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14 BY: BRIAN MCCAFFREY, ESQ.

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1 P R O C E E D I N G S

2 THE CLERK: -- presiding.

3 THE COURT: Please be seated.

4 THE CLERK: The matters on Stuart versus Abraham.

5 THE COURT: Okay. Let's go.

6 THE CLERK: Can I have appearances, please?

7 THE COURT: And no witness -- there won't be any
8 witnesses other than the people who are here?

9 MR. MCCAFFREY: Yes, Your Honor.

10 THE COURT: Okay. So there's nobody to be
11 excluded because everybody's a party?

12 MR. MCCAFFREY: Correct.

13 MR. GAFFNEY: Actually, Your Honor --

14 MR. MCCAFFREY: Well --

15 MR. GAFFNEY: -- Amy Abraham is not a party and I
16 would like her to be excluded during --

17 MR. MCCAFFREY: Right. She's --

18 MR. GAFFNEY: -- her husband's testimony.

19 MR. MCCAFFREY: She's not a defendant. She's the
20 defendant's wife. But she's also --

21 THE COURT: Is she here?

22 MR. MCCAFFREY: -- a joint debtor. Yes.

23 THE COURT: Oh, I didn't see her. I didn't --

24 MR. GAFFNEY: I -- she's not a defendant. I would
25 like her to be excluded during her husband's testimony.

1 MR. MCCAFFREY: I would prefer that she stay, but
2 I'm not going to make too much of an objection to it. I
3 don't -- she is a joint debtor and her -- I think that --

4 THE COURT: The theory is that she and her husband
5 haven't -- don't know what they're going to say. I mean,
6 what --

7 MR. GAFFNEY: There's no -- there's no claim
8 against her husband in this adversary proceeding. It was
9 brought solely against Stanley Abraham. It's seeking relief
10 solely against Stanley Abraham. Amy Abraham is receiving
11 her discharge regardless.

12 THE COURT: All right. We'll exclude her.

13 MR. MCCAFFREY: Okay.

14 THE COURT: It's easier than arguing --

15 MR. MCCAFFREY: It just means you have to --

16 THE COURT: -- about it.

17 MR. MCCAFFREY: -- wait outside and let everyone
18 else testify. That way you won't have heard the other
19 testimonies.

20 MS. ABRAHAM: Okay.

21 MR. MCCAFFREY: That's all.

22 THE COURT: She doesn't have to go now.

23 MR. GAFFNEY: No.

24 THE COURT: Okay. Let's go. Who is -- your case?

25 MR. GAFFNEY: I have -- just wanted to hand up a

1 copy of the exhibits.

2 THE COURT: I know we have some differences on
3 admissibility to certain exhibits.

4 MR. MCCAFFREY: Yes.

5 THE COURT: So the exhibits that you're not -- you
6 don't have problem with will all be admitted without
7 objection, correct?

8 MR. MCCAFFREY: Right.

9 THE COURT: And then when we get to those exhibits
10 for which there are issues, we'll deal with them
11 individually.

12 MR. MCCAFFREY: Okay.

13 THE COURT: All right.

14 MR. GAFFNEY: Yes.

15 THE COURT: You can make brief opening statements
16 or not. I mean, I've read the papers. There's no jury
17 here. If you want to tell me what it's about, that's fine,
18 or else we can just get started.

19 MR. GAFFNEY: I don't see any reason to waste the
20 Court's time with opening statements. I think you --

21 THE COURT: Okay. I'll give you the opportunity
22 when it's your turn.

23 MR. MCCAFFREY: Okay.

24 THE COURT: Your case.

25 MR. GAFFNEY: Your Honor, for the plaintiff's

1 first witness I'm going to call --

2 THE CLERK: Can -- can you please state your name
3 for the record?

4 MR. GAFFNEY: I apologize. Joel Allen (ph)
5 Gaffney from the Law Office of Gregory Messer appearing for
6 the plaintiff, Janet Stuart.

7 THE CLERK: Sir, can I have your appearance, also?

8 MR. MCCAFFREY: Brian McCaffrey appearing for the
9 defendant, Stanley Abraham.

10 MR. GAFFNEY: Plaintiff's first witness is Stanley
11 Abraham.

12 THE COURT: Okay.

13 THE CLERK: Can you please raise --

14 MR. ABRAHAM: Yes.

15 THE CLERK: -- your right hand?

16 STANLEY ABRAHAM, WITNESS, SWORN

17 THE CLERK: Can you please state and spell your
18 name for the record?

19 THE WITNESS: Stanley Abraham, S-T-A-N-L-E-Y,
20 Abraham A-B-R-A-H-A-M.

21 THE CLERK: Okay. Can you please be seated?

22 THE WITNESS: Sure.

23 THE CLERK: Thank you.

24 MR. GAFFNEY: Your Honor, may I have permission to
25 treat this witness as hostile?

1 THE COURT: Yeah.

2 DIRECT EXAMINATION

3 BY MR. GAFFNEY:

4 Q Mr. Abraham, you have a bachelor's degree, right?

5 A Sorry.

6 Q You have a bachelor's degree?

7 A I do.

8 Q And you got that from the State University of New York,
9 right?

10 A SUNY Old Westbury.

11 Q SUNY which?

12 A Old Westbury.

13 Q What's your degree in?

14 A Finance.

15 Q So you have a bachelor's degree in finance?

16 A Correct.

17 Q When did you earn it?

18 A 2005, I believe.

19 Q When did you open your first business?

20 A I don't recall, maybe -- I don't recall.

21 Q Was it before or after you graduated from SUNY?

22 A I believe it was after.

23 Q What was the nature of your first business?

24 A It was so long ago I don't recall it.

25 Q And you're a -- you're a licensed real estate salesman

1 now, right?

2 A Yes.

3 Q A real estate --

4 A I'm a --

5 Q -- broker?

6 A -- broker.

7 Q And as part of your duties for that your job is to find
8 buyers for properties and find sellers who are interested in
9 selling to people who want to buy; is that right?

10 A Right. I would help people buy and sell their
11 property.

12 Q Do you mostly represent sellers or buyers?

13 A It varied. I mean, it was both, a little bit of both.

14 Q Commercial or residential?

15 A I did a little bit of both.

16 Q In front of you you have a book of exhibits, the
17 admissibility of which has been agreed between counsel. Can
18 you please open up to the tab marked Joint Exhibit A?

19 (Pause)

20 Q Twelve pages in you'll find a page titled, Schedule B.
21 Can you please turn to that?

22 A The one that says, personal property.

23 Q Schedule B, personal property. Yes.

24 A Okay.

25 Q Did you read this document before you signed your

1 petition?

2 A I did.

3 Q Is this a true and accurate copy of the Schedule B that
4 was filed with your initial voluntary petition?

5 A I believe -- I believe so. I think in this one -- this
6 was the initial one that we had filed?

7 Q That's what the docket says.

8 A Right. Yeah. I think we had amended this, correct?

9 Q But this one was the first one you filed?

10 A Oh, right.

11 Q The day you commenced your bankruptcy case you
12 commenced it by filing a petition with attached schedules, a
13 statement of financial affairs and declarations, right?

14 A Right.

15 Q And before that was filed you signed the declarations
16 on the petition and --

17 A Yes.

18 Q -- gave them to your attorney?

19 A Yes.

20 Q And you authorized him to sign the voluntary petition
21 for you?

22 A Right.

23 Q With the information that was in this petition?

24 A Right.

25 Q On the day you signed -- signed the petition --

1 A Right.

2 Q -- filed the petition? Turn to the next page, line 13.

3 Line 13 is labeled, stock and interests in incorporated an

4 unincorporated businesses itemized.

5 A Right.

6 Q What did you list there in your initial petition?

7 A It says -- shows an X there, none.

8 Q What does that X signify? Does it signify that you're

9 representing you have none?

10 A Right. Yeah.

11 Q I would like you now to turn towards the end of this

12 document. There's a -- I apologize. There's not page

13 numbers on the document, but it's a document labeled,

14 statement of financial affairs. It's about halfway through

15 the document.

16 A Where -- where would I find this?

17 Q It's about halfway through the document. It's right

18 after a document that says, declaration concerning debtors'

19 schedules, and it's right before the list of your creditors.

20 A Okay. Yes. I'm there.

21 Q Okay. Question 1 says, income from employment or

22 operation of business, right?

23 A Correct.

24 Q And it asks you to state the gross amount of income the

25 debtor has received from employment, trade or profession, or

1 from operation of the debtors' business, including part-time
2 activities and so on during the two years before the
3 bankruptcy was filed; is that right?

4 A Okay.

5 Q What does line 1 of your statement of financial affairs
6 list for income for your wife in 2013?

7 A Eighteen-thousand.

8 Q Do you know -- do you remember what date you filed your
9 bankruptcy petition?

10 A August, I believe, of 2013.

11 Q So half of 2013 had passed when you filed this?

12 A Right.

13 Q What was your -- what was your wife's monthly income?

14 A I think at that -- it was about -- her gross income was
15 maybe --

16 Q Yeah.

17 A -- 6,000 and change.

18 Q \$6,000 a month?

19 A I think, yes, 65 or 64. I'm not sure exactly.

20 Q And so in August of 2013 you represented in your
21 bankruptcy petition that to year to date her income had been
22 \$18,000 even though she was making \$6,500 a month?

23 A Right. I mean, I don't know exactly. I don't remember
24 -- recall what I had told my attorneys at the time. But
25 then we had amended it because, you know, it wasn't correct.

1 Q You amended your statement of financial affairs?

2 A I believe the attorneys did so.

3 Q Do you remember when you amended your statement of
4 financial affairs?

5 A I'm not sure.

6 Q It was June of last year, wasn't it?

7 A I'm not sure. I don't -- I really don't --

8 Q But it was after this adversary proceeding was brought
9 objecting to your discharge on the basis of false statements
10 in your statement of financial affairs, wasn't it?

11 A To be honest with you I don't recall. I don't remember
12 when we did it.

13 Q You don't remember when you filed an amendment?

14 A I don't.

15 Q Did you read the statement of financial affairs before
16 you signed it, before you filed your petition?

17 A I did.

18 Q Did you --

19 A I looked --

20 Q -- understand it?

21 A Yeah. For the most part, yeah.

22 Q Turning to later in the statement of financial affairs,
23 question number 18.

24 (Pause)

25 A Uh-huh.

1 Q Question number 18 asks you to list all corporations
2 that you've been an officer, a director, or a managing
3 member of for the last six years before your bankruptcy
4 petition. What did you list in question 18 on your
5 statement of financial affairs?

6 A It doesn't show any.

7 Q It is -- is the box marked none filled in?

8 A Yes.

9 Q Going down to question 19, question 19 asks you to
10 disclose the identity of bookkeepers and accountants who,
11 within two years preceding the bankruptcy, have kept or
12 supervised the keeping of books of account for the debtor.
13 Did you mark the box none in question 19?

14 A Yes. I mean, I personally didn't do this. It was my
15 attorneys that did this, so I didn't -- you know, I can't
16 remember if I told them. So I just -- I don't know how it
17 was not put in.

18 Q That -- that's fine, Mr. Abraham. Turn to the end of
19 the statement of financial affairs, the last page. Do you
20 see it says, declaration under penalty of perjury by
21 individual debtor?

22 A Sorry. Where am I looking?

23 Q It's the last page of the statement of financial
24 affairs, two pages after the one we were just talking about.

25 A Right.

1 Q And on this document it shows an S/ representing an
2 electronic signature, but that signature is a representation
3 from your attorney that you've signed this document --

4 A Right.

5 Q -- is that right?

6 A Right.

7 Q Did you sign this document?

8 A Yes.

9 Q Did you read this document before you signed it?

10 A I did, maybe not as thorough as I should have.

11 Q But you did read it?

12 A Yeah.

13 Q Did you understand it?

14 A For the most part.

15 Q I just have one more --

16 A But --

17 Q -- question about this document. You're going to have
18 to go back a little bit.

19 A Could I just -- in this same document, in 20 -- in
20 Number 21 it does list the corporations here.

21 Q Oh, let's talk about paragraph 21, then. Paragraph 21
22 opens with, "If the debtor is a partnership, list the nature
23 and percentage of partnership interests of each member of
24 the partnership." Are you a partnership?

25 A No. I mean, I'm the owners of Amstan (ph), Amstan Real

1 Estate, and Asian Foods I have a partner.

2 Q But are you a partnership or are you an individual?

3 A I'm an individual.

4 Q That's what I thought. Let's turn back to Schedule C.

5 It follows right after Schedule B which we were looking at

6 before. It's still part of Exhibit A.

7 A Oh, okay. Part of Exhibit A? Schedule B?

8 Q C.

9 A C.

10 (Pause)

11 Q It says, Schedule C property claimed as exempt.

12 A Uh-huh.

13 Q Do you know what this -- what this schedule lists?

14 A I'm assuming just the assets.

15 Q But, I mean -- what I mean is do you know why assets
16 are listed in this schedule?

17 A No.

18 Q No? You don't know what function claiming an exemption
19 has?

20 A Meaning to exempting myself? I'm not sure exactly.

21 Q Well, a Schedule C lists property that you have claimed
22 as exempt from the bankruptcy estate.

23 A Okay.

24 Q When you file a bankruptcy petition it creates an
25 estate that a trustee administers for the benefit of your

1 creditors.

2 A Okay.

3 Q You filed this schedule to exempt property out of that
4 saying under whatever statutory law you've listed in the
5 schedule this property belongs to you, not the bankruptcy
6 estate and can't be used to satisfy the debts of your
7 creditors.

8 A Okay.

9 Q Look at the second entry. It says, land, a quarter
10 acre of land, lot 12, block 49 in Ocala Park Estates, Ocala,
11 Florida 34482. What statutory section does it say provides
12 an exemption for that property in the schedule?

13 A I'm sorry. Say that again.

14 Q For the second entry it lists a statutory provision
15 that gives you an exemption in that property. What
16 provision does it say there?

17 A I'm not following you. I mean, when you --

18 Q Does it say 11 U.S.C. --

19 A Oh, right. Okay.

20 Q -- Section 522 --

21 A Is that --

22 Q -- (d)(5)?

23 A Yes.

24 Q Do you know what 11 U.S.C. Section 522(d)(5) is?

25 A No.

1 Q You don't know what it provides for?

2 A No.

3 Q Did you ask your attorney before you signed your
4 schedules?

5 A I -- I mean, I didn't ask them what that means.

6 Q Do you know how much property you're allowed to exempt
7 under 522(d)(5)?

8 A I believe it was property with -- you can -- up to,
9 between a joint couple, 350,000 or something like that.

10 Q Okay. Who owns that quarter acre of land, you or your
11 wife?

12 A I own that.

13 Q You? Not jointly with your wife?

14 A No. I mean, with --

15 Q Who owns the other -- the second one, the other quarter
16 acre?

17 THE COURT: Hold it. Hold it. Hold it. Were you
18 going to finish that answer?

19 THE WITNESS: With these properties I had
20 mentioned to my attorneys I don't need to keep it. You can
21 liquidate it and, you know, take whatever you can from that.
22 I didn't want to hold any -- it's not something that I
23 really cared for.

24 Q But you claimed an exemption in both of these
25 properties, didn't you?

1 A I guess, but I think I had mentioned that. I don't
2 know if it was a failure on my part or --

3 Q Okay. Well, let's ignore the land in Florida, then.

4 Move down to -- there's a checking account in Chase
5 Bank in Garden City with \$1,600 in it. Is that your account
6 or your wife's account?

7 A That was our account. Yes.

8 Q Your --

9 A Joint.

10 Q -- joint account?

11 A Yes.

12 Q Okay. What about the next one ending 2180, is that
13 your account or --

14 A Joint --

15 Q -- your wife's account?

16 A Joint.

17 Q That's joint. What about the next one ending in 4831?

18 A I believe --

19 Q Is that joint or --

20 A I believe that was --

21 Q -- yours?

22 A -- a joint account as well.

23 Q I want to refer you back to the Schedule B, question
24 number 2. You see it lists checking, savings and other
25 financial accounts?

1 A Uh-huh.

2 Q Do you see the column that says husband, wife, joint or
3 community?

4 A Yes.

5 Q What letter does it say for the first account there,
6 the account ending in 4667?

7 A It says H.

8 Q Do you understand what H stands for there?

9 A Husband.

10 Q Right. So in your Schedule B you're representing that
11 the 4667 account belongs to you --

12 A Okay.

13 Q -- not your wife; is that right?

14 A Okay. Yeah.

15 Q So going back to Schedule C, this first account, 4667
16 account, that belongs to you, not your wife?

17 A Right.

18 Q So it's not joint with your wife. The only two
19 accounts that are joint with your wife are the other two?

20 A I guess. I mean, I didn't know, you know. By looking
21 at it I wouldn't know it like this. I would have to look at
22 my statements.

23 Q Okay. What about on the next page, the BMW? Who owns
24 the BMW, you or your wife?

25 A That's -- that was my car.

1 Q Your car? Purely yours, not hers at all?

2 A Sorry. Say that again.

3 Q It belongs to you entirely, not to her at all; is --

4 A Yeah.

5 Q -- that right?

6 A Yes.

7 Q And the same is true for the Ford?

8 A Correct.

9 Q What is the amount of the exemption you requested to --
10 you claimed for the BMW pursuant to 522(d)(5)?

11 A Fifteen-thousand.

12 Q Fifteen-thousand is the current value of the property
13 without deducting the exemption. The next column over
14 breaks down the two exemptions you claimed in the BMW. The
15 bottom one is the one that's for 522(d)(5). I -- it -- it
16 looks like it says \$7,650; is that right/

17 A I'm -- where are you looking?

18 Q Schedule C.

19 A Okay.

20 Q Is that right?

21 A Yeah.

22 Q \$7,650 in the BMW pursuant to 522(d)(5)?

23 A Well, there -- there's two amounts, 7,350 and 7,650.

24 What is that?

25 Q Right. And there's two statutes. There's 522(d)(2)

1 and 522(d)(5).

2 A Okay.

3 Q I'll represent to you 522(d)(2) is a federal law that
4 provides an exemption for household vehicle --

5 A Okay.

6 Q -- limited to \$7,350.

7 A Okay.

8 Q For the Ford you claimed all of that exempt under
9 522(d)(5); is that right?

10 A Right.

11 Q Okay. After you filed your bankruptcy petition you
12 were given a notice of a meeting of creditors; is that
13 right?

14 A Yes.

15 Q And that meeting of creditors was I believe in
16 September of 2013?

17 A I think so.

18 Q And you attended that meeting of creditors, right?

19 A Right. Yeah.

20 Q And my -- the plaintiff, Janet Stuart, was at that
21 meeting of creditors, wasn't she?

22 A Yes.

23 Q You saw her?

24 A Yes.

25 Q And when your case was called isn't it true that the

1 trustee said there are no creditors here?

2 A I don't recall that.

3 Q Well, did any creditors come up to the table with you
4 when you -- when your case was called?

5 A Actually, I think they did call for somebody to -- if
6 anybody had any objections to stand up, but nobody did. But
7 I did --

8 Q What did they say?

9 A -- see her there.

10 Q What did they say?

11 A I don't remember exactly, but I believe they had said
12 someone -- if there were any objections to filing the
13 bankruptcy you could stand up or come forward, but I didn't
14 -- but no one did.

15 Q But you don't remember exactly what was said?

16 A I don't remember exactly, but I remember there was a
17 time when he had called for that.

18 Q But you knew Janet Stuart was there?

19 A Yeah. She was there.

20 Q And you never told the trustee that?

21 A I didn't know I had to.

22 Q I'm not suggesting you had to. I'm just asking if you
23 did.

24 A No, I didn't tell the trustee. No.

25 Q Okay. I would like you now to turn to the tab marked

1 Joint Exhibit E. Joint Exhibit E is an amended Schedule B
2 that you filed after your meeting -- meeting of creditors
3 with the trustee; is that right?

4 A Yeah.

5 Q And the difference between the amended Schedule B and
6 the original Schedule B is line 13, right?

7 A Right.

8 Q And on your amended Schedule B on line 13 you list
9 Amstan, LLC business dissolved; is that right?

10 A Right.

11 Q Did you list Amstan Real Estate, LLC on schedule -- on
12 your amended Schedule B?

13 A I don't see it there.

14 Q Did you list Ambient (ph) Pharmaceuticals, Inc.?

15 A I don't see it there.

16 THE COURT: But you have an ownership interest in
17 both those corporations?

18 THE WITNESS: I did. I just -- I mean, I -- like
19 I said, I don't know if I -- I think I had told my attorneys
20 about it. I just don't know if it was a mistake between us.
21 It was not active, so.

22 BY MR. GAFFNEY:

23 Q But you have a finance degree --

24 A Right.

25 Q -- from the State University of New York, right?

1 A Right.

2 Q I would like you now to turn to the tab marked Joint
3 Exhibit N. That's N as in Nancy.

4 (Pause)

5 Q Joint Exhibit N is the amended complaint that was filed
6 in this case in March of 2013. Do you remember receiving a
7 copy of that?

8 A I had a lot of these documents mailed to me. I don't
9 remember exactly -- particularly this one, but there were a
10 -- a lot of them mailed and I would just forward it to
11 attorney -- the attorney.

12 Q So you have no recollection of seeing the amended
13 complaint that was filed against you?

14 A Like I said, I might -- I mean, a lot of the times when
15 I would receive it I would just give it to my attorneys. I
16 wouldn't -- I didn't really look at it.

17 Q I'm going to give -- come back to Joint Exhibit N in a
18 minute, but can you flip, please, to the tab marked Joint
19 Exhibit O?

20 (Pause)

21 Q Joint Exhibit O is the answer that was filed on your
22 behalf in response to the amended complaint and it contains
23 a series of admissions and denials; is that correct?

24 A Yeah.

25 Q Did you authorize your attorney to file this document

1 on your behalf? Did you read this document --

2 A Most --

3 Q -- before it was filed?

4 A I mean, like I said, there was so many I don't recall.

5 Q All right. Turn to paragraph 27 in your -- in what
6 you're looking at now. This is an answer to the allegation
7 in paragraph 7 of the amended complaint, which I'm going to
8 read to you. The amended complaint says:

9 "Line 13 of Schedule B lists no stock ownership in
10 any incorporated or unincorporated businesses, but
11 defendant owns stock in businesses on the filing date.
12 Evidence of this is in the schedules themselves as
13 numerous debts owed by Amstan, LLC and Abraham Imports
14 Business are listed on Schedule F."

15 Can you read, please, your response to paragraph
16 27 from your answer?

17 A You just want me to read what it says here?

18 Q Yes, please.

19 A "Defendant disclosed his relationship to both Amstan,
20 LLC and Abraham Imports. Neither of these entities
21 have any assets or active, nor earning any profits in
22 the past several years and, thus, there is nothing of
23 value to disclose."

24 Q Can you please show me where on Schedule B in your
25 original petition you disclosed your relationship to both

1 Amstan, LLC and Abraham Imports? It will be in Joint
2 Exhibit A if you can find it.

3 A And the -- actually, Abraham -- it's not Abraham
4 Exports (sic). It was Abrammin (ph), but it was -- like I
5 said there was no activity in any of these businesses so it
6 was just --

7 Q So because there was no activity in these businesses
8 you just decided they didn't need to be listed. Is that
9 what you're saying?

10 A No. It's just like -- like I said there -- I just --
11 it was not active so I just maybe forgot or I don't know if
12 I mentioned it to the attorneys and they just didn't list
13 it. I don't remember exactly what happened.

14 Q When did you found Abrammin Imports?

15 A I don't remember.

16 Q Is Abrammin Imports a successor entity from a changed
17 name from a previous entity you owned?

18 A No.

19 Q What's the new name of Ambient Pharmaceuticals?

20 A Asian Foods and Produce Distributors.

21 Q When did you change the name of Ambient Pharmaceuticals
22 to Asian Foods and Produce Distributors?

23 A Early in 2013, I believe.

24 Q What was Abrammin Imports supposed to do?

25 A Abrammin, I was trying to -- I was going to import

1 coffee from India, but it just never panned out.

2 Q When were you doing that?

3 A This is a long time ago. I can't remember exactly when
4 I started it. I mean, I opened the corporation, but I never
5 did anything with it. I was just researching and trying to
6 figure out -- my cousins actually had a company in India
7 that I thought I could import from, but it just never worked
8 out.

9 Q Did you ever close the corporation?

10 A I had asked my accountants to close it, so, I mean, I
11 don't know if they dissolved it, but I never had any
12 accounts or bank accounts or anything with any of these
13 corporations.

14 Q Who is your accountant?

15 A Vinad (ph) G. Abraham.

16 Q Are you related to Vinad Abraham?

17 A No.

18 Q How long have you been using Vinad Abraham as your
19 accountant?

20 A I had -- I used him a very long time. I started when I
21 was younger and then for a -- for a year few years I think I
22 had -- for a few years I had left him and went to someone
23 else and then I came back to him not too long ago.

24 Q Do you use him for your personal finances and your
25 businesses?

1 A For both, yeah.

2 Q Does he keep books and records for your businesses?

3 A He does.

4 Q For all of your businesses?

5 A Yeah.

6 Q Did you disclose that on your original petition?

7 A Disclose what?

8 Q That Vinad Abraham kept books and records for you and
9 your businesses?

10 A I don't recall if I did or not. And, actually, I had
11 mentioned to my attorney that for 2011 and 2012 we didn't
12 file any returns for Amstan Real Estate. I have -- I would
13 have to go back and amend it, but it was just not active so
14 we didn't file anything, any returns for that.

15 Q Okay. But he still had the books and records, right?

16 A It was a zero return so there wouldn't be any books.
17 It's just -- you know, I didn't -- we didn't file the tax
18 return.

19 Q What do you do with your books and records after you
20 file a tax return?

21 A If I have them I keep -- if I have something I keep it.

22 Q You keep it or your accountant keeps it?

23 A I mean, my documents, I would keep it.

24 Q So you have your books and records?

25 A What -- when you say books and records what are you

1 referring to, invoices?

2 Q Well, what I asked you was after you file your tax
3 returns for your businesses, what do you do with the books
4 and records, the supporting documentation that was used to
5 create that return?

6 A I would keep it.

7 Q You would keep it?

8 A Yeah.

9 Q How long?

10 A For Amstan, LLC the -- that was one of the active
11 businesses that I had at that time. I have all the records.
12 I still have it.

13 Q Let's go back to Joint Exhibit A. I apologize. It's
14 very lengthy. The statement of financial affairs again, at
15 the end of it, it comes right before your list of creditors.
16 Did you find it?

17 A Uh-huh.

18 Q Go to question 19, sub-question C. What does sub-
19 question C ask you to list in your statement of financial
20 affairs?

21 A Individuals or firms who are in possession of the
22 books.

23 Q What does that mean to you?

24 A Exactly what it says. If --

25 Q Okay. How many firms or individuals did you list in

1 answer to that question?

2 A In this it says none.

3 Q But you had the books and records?

4 A Right.

5 Q Okay. Let's go back to Joint Exhibit N, paragraph 35.

6 This is another paragraph that you denied in your answer.

7 The paragraph says, "Notwithstanding the declaration

8 described in paragraph 15(b) above, defendant's statement of

9 financial affairs is not true and accurate."

10 15(b) is a description of the declaration under

11 penalty of perjury that follows the statement of financial

12 affairs. You denied that. By denying a statement that

13 something is not true and accurate, what do you think that

14 means?

15 A I didn't agree with it.

16 Q Does it mean that it is true and accurate?

17 A What do you -- I'm not understanding what you're
18 saying.

19 Q If I say that your statement of financial affairs is
20 not true and accurate --

21 A Right.

22 Q -- and you deny that, is that a representation that it
23 is true and accurate?

24 A Right. Yeah.

25 Q So your statement of financial affairs, according to

1 your answer, was true and accurate?

2 A Right. I mean, like I said, I --

3 Q But you didn't list your accountant on the statement of
4 financial affairs.

5 A Okay.

6 Q And you didn't list yourself as the person holding your
7 books and records.

8 A Yeah. That was just -- like I said that's
9 miscommunication between myself and the attorney, I guess.

10 Q And you declared that your wife year to date had earned
11 \$18,000.

12 A Right. I believe we put all the --

13 Q Now you've mentioned several times --

14 THE COURT: Hold it. Let him finish.

15 MR. GAFFNEY: I'm sorry.

16 THE WITNESS: I believe we put all the paystubs
17 and everything in the -- in the documents, right? Yeah.

18 MR. GAFFNEY: There were paystubs. Yes.

19 THE WITNESS: Yeah. So, I mean --

20 MR. GAFFNEY: I'm not asking you about the
21 paystubs.

22 THE WITNESS: No. I mean --

23 THE COURT: Let me ask -- hold it a second.

24 You amended the schedules a year some odd time
25 later; is that right?

1 THE WITNESS: From the original, yeah. I don't
2 remember exactly when it was amended, but we -- I believe
3 the attorneys did amend it.

4 MR. GAFFNEY: Your Honor, I was just about to get
5 to that.

6 THE COURT: Well, hold on. Is the amended
7 document you filed true and accurate?

8 THE WITNESS: I -- I don't remember exact -- I
9 don't remember at all exactly, but it should be to the most
10 part because everything I -- everything that I had --

11 THE COURT: And is it different from the original
12 that you filed?

13 THE WITNESS: I believe it includes the
14 corporations and things like that were not originally
15 listed.

16 THE COURT: Can they both be true and accurate if
17 they're different?

18 THE WITNESS: No.

19 THE COURT: So then the original was not true and
20 accurate?

21 THE WITNESS: Right. Right. Right.

22 THE COURT: Okay.

23 BY MR. GAFFNEY:

24 Q Turn in your book to the tab marked Joint Exhibit R,
25 please.

1 THE COURT: Which tab?

2 MR. GAFFNEY: R.

3 BY MR. GAFFNEY:

4 Q Mr. Abraham, Joint Exhibit R is an amended schedule --
5 statement of financial affairs that you filed on June 6th,
6 2014. Do you see question 1?

7 A Yes.

8 Q What does it say for your wife's income from
9 employment?

10 A \$86,507.78.

11 Q Is \$86,507.78 different or the same as \$18,000?

12 A It's different.

13 Q And question 1 also lists \$15,129 of income for you in
14 --

15 A Right.

16 Q -- 2012, right?

17 A Right.

18 Q How much income did you list for yourself in your
19 original statement of financial affairs?

20 A I don't recall. Was it zero?

21 Q It was zero.

22 A Okay.

23 Q Let's go look at the other changes you made. Flip to
24 paragraph 18 or question 18. And then turn to the page
25 after where it says 18 where the answers are actually

1 listed. Does this make any sense to you?

2 A In the -- in the same -- you're saying --

3 Q Yeah. The answer to question 18, is that clear? Do
4 you understand what that's trying to say?

5 A It's just listing the corporations, correct?

6 Q I'm not sure. I'm asking you.

7 A Yeah.

8 Q Okay. The second column asks you to list the last four
9 digits of social security or other tax -- individual
10 taxpayer ID number or the complete EIN. What's listed in
11 that column for Amstan, LLC?

12 A It says 5570.

13 Q But is 5570 for Amstan, LLC?

14 A No.

15 Q Is it for Abramin Imports, Inc.?

16 A No.

17 Q What is it for?

18 A That's the last four of my social security.

19 Q Your social security. How did you report -- when you
20 filed income taxes for these companies, did they have their
21 own EINs or were they part of your personal tax return?

22 A Well, the LLC was part of the personal because it was
23 -- it's an LLC.

24 Q But the corporation wasn't.

25 A Right.

1 Q The corporation --

2 A But like I said Abraham --

3 Q -- had EIN, right?

4 A -- Abramim Imports I haven't filed anything in God
5 knows how long. It's been very long because it was just
6 sitting there.

7 Q But did Abramim Imports, Inc. have an employer
8 identification number issued by the IRS?

9 A I think it did. I'm not sure if I ever went that far.

10 Q Under the column of address, what address is that?

11 A That's the address of the Amstan -- the Subway that I
12 owned under Amstan, LLC.

13 Q Okay. And on question 19, sub-question A, you list
14 Vinad G. Abraham, CPA --

15 A Right.

16 Q -- at 4 Marietta Court, Syosset, New York 11791 as the
17 accountant that you've used since 11/2012.

18 A Right.

19 Q Who did you use as an accountant before November of
20 2012?

21 A I believe it was still Vinad Abraham.

22 Q Okay. Turn the next -- to the next page, sub-question
23 C.

24 THE COURT: Hold it one second. Amstan, LLC never
25 filed a tax return?

1 THE WITNESS: It did. It closed -- I was evicted
2 actually in November of 2012 from that store. So --

3 THE COURT: So what did it file -- counsel asked
4 you whether it had an EIN number.

5 THE WITNESS: It does.

6 THE COURT: But it's not 5570.

7 THE WITNESS: No. That's my social security. I
8 don't know. That was just like they said. I don't know --

9 THE COURT: So the EIN number for Amstan, question
10 18, doesn't appear.

11 THE WITNESS: The EI -- that's not the correct --
12 no.

13 THE COURT: All right.

14 MR. GAFFNEY: Okay.

15 BY MR. GAFFNEY:

16 Q I thought you said that it was part of your personal
17 tax return?

18 A It is filed -- I believe it is filed with my personal.

19 Q But it had an EIN?

20 A But it has its own EIN number.

21 Q Okay. Do you know that EIN?

22 A I don't.

23 Q All right. Turning to the next page 19, sub-question
24 C, this is the same question --

25 THE COURT: Hold it. Hold it. I got to ask. You

1 showed on these schedules that you received about 16,000 in
2 income from that entity.

3 THE WITNESS: From Amstan, LLC. Correct.

4 THE COURT: So that entity did business.

5 THE WITNESS: It did. Yes. It was a retail
6 store, a Subway franchise.

7 THE COURT: And so how did it file -- not file a
8 tax return?

9 THE WITNESS: No. No.

10 THE COURT: You would get a K-1 from it, correct?

11 THE WITNESS: I don't know how it works, but
12 because it's an LLC he -- they file it in the same -- I
13 think it's a -- I don't -- I think -- if you have the tax
14 returns you can show him --

15 THE COURT: Yeah. But you get -- it's a K-1 and
16 it should show all the income and that then becomes part of
17 you.

18 THE WITNESS: Right.

19 MR. MCCAFFREY: Your Honor --

20 THE WITNESS: I mean, my accountants --

21 MR. MCCAFFREY: May I just --

22 THE WITNESS: -- did file --

23 MR. MCCAFFREY: -- I want to interrupt just to
24 clarify --

25 THE COURT: No. No.

1 MR. MCCAFFREY: -- a technical point. I have the
2 2012 tax returns that I had planned on introducing.

3 THE COURT: Okay.

4 MR. MCCAFFREY: It wasn't filed as K-1. It was an
5 S corporation as an LLC. I can't speak as fully on it, but
6 I can --

7 THE COURT: Where -- well, Amstan is an LLC. It's
8 not an S corp.

9 MR. MCCAFFREY: That's right, Your Honor, but
10 whether a corporation or an LLC can -- either can choose to
11 elect to be a C as for tax return filing. And I don't want
12 to act as an expert here, but I have researched and spoken
13 with the accountant, they can file either as an S or a C,
14 not a corporation, let's say, but for purposes of tax
15 returns, yes.

16 And so there's a -- an income and expense sheet as
17 a S corp., even though it's an LLC, and that's represented
18 in Mr. Abraham's tax returns for Amstan, LLC. And that's
19 the way his accountant did it and I spoke with another
20 accountant. They said that's the proper way to do it.

21 THE COURT: And he was the sole owner of the LLC?

22 MR. MCCAFFREY: Correct.

23 MR. GAFFNEY: My understanding was that single
24 member LLCs can be taxed disregarded entities, too.

25 THE COURT: No. Just --

1 MR. MCCAFFREY: Because he's a single member.

2 That further explains --

3 THE COURT: That's okay.

4 BY MR. GAFFNEY:

5 Q Question 19(c) asks you to list all firms or
6 individuals who at the time of the commencement of this case
7 were in possession of the books and accounts -- books of
8 account and records of the debtor. What did you list there?

9 A Where is this?

10 Q Question 19(c).

11 A Yeah. It says, none.

12 Q But you had records, right?

13 A I do.

14 Q Question 21(a) says, "If the debtor is a partnership
15 list the name and percentage of partnership interest of each
16 member of the partnership," and you said, "see attached,"
17 and there's an attached schedule, right?

18 A Right.

19 Q And that schedule lists Amstan, LLC, Amstan Real
20 Estate, and Asian Food and Produce.

21 A Where do you see that?

22 Q It's at the back. We're still on Exhibit R.

23 A Okay. Yeah.

24 Q There are some typewritten sheets that are attached to
25 the back of that document?

1 A Right.

2 THE COURT: It's the last page --

3 MR. GAFFNEY: Right.

4 THE COURT: -- of the exhibit.

5 THE WITNESS: Okay.

6 MR. GAFFNEY: 21(a).

7 BY MR. GAFFNEY:

8 Q It lists Amstan, LLC, Amstan Real Estate, and Asian
9 Food and Produce, right?

10 A Right.

11 Q Does it list Abramini Imports?

12 A No, it doesn't.

13 Q Now not to belabor the point you also filed a second
14 amended statement of financial affairs on June 12th, 2004.
15 You'll find that at Joint Exhibit S. Is there a difference
16 between this document and the document we were just looking
17 at?

18 A I'm not sure. I would have to look through it all.

19 Q I see one. Go to question 18. There's a complete EIN
20 number now. Is that the EIN for Amstan, LLC, for Abramini
21 Imports, or for Ambient Pharmaceutical?

22 A I don't know by looking at it. I would have to go back
23 and look at my tax --

24 Q And Ambient Pharmaceutical wasn't listed on the last
25 document we -- we looked at either, was it?

1 A Right.

2 Q Or, no, actually maybe it was. I don't remember.

3 Yeah. It wasn't. So you filed in this case a total of
4 three different statements of financial affairs; is that
5 right?

6 A Yeah.

7 Q And they're all different?

8 A It looks that way. Yeah.

9 Q So is it fair to say that at least two of them are not
10 true and accurate?

11 A Right.

12 MR. GAFFNEY: I don't have any further questions
13 for this witness.

14 THE COURT: Any cross?

15 MR. MCCAFFREY: Yes, Your Honor.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. MCCAFFREY:

19 Q Mr. Abraham, do you have any intent --

20 THE COURT: Can you go up to the podium, please?

21 MR. MCCAFFREY: Oh, sorry.

22 BY MR. MCCAFFREY:

23 Q Mr. Abraham, has it ever been your intent to deceive or
24 defraud this Court in any way?

25 A Never.

1 Q Have you done your best or have you --

2 MR. GAFFNEY: Objection. Leading.

3 MR. MCCAFFREY: Well, I'm cross-examining. I
4 don't --

5 THE COURT: Let him finish the question before we
6 object to it.

7 MR. MCCAFFREY: I'll withdraw that and just ask --
8 BY MR. MCCAFFREY:

9 Q Have you made reasonable efforts to disclose all of
10 your assets and liabilities to this Court and to the trustee
11 that was appointed to oversee your case?

12 A Yes.

13 MR. GAFFNEY: Again, Your Honor, leading. This is
14 his witness.

15 THE COURT: Yeah. I want to hear the answers.
16 Overruled.

17 THE WITNESS: Yes. Whatever I had I had given to
18 your office.

19 BY MR. MCCAFFREY:

20 Q Did -- did you have any earnings in the six -- you --
21 when did you file the Chapter -- this Chapter 7 bankruptcy
22 case roughly?

23 A I believe it was August of -- I don't remember exactly
24 -- August of 2013.

25 Q Okay. And did you personally have any earnings in the

1 six months prior --

2 A No.

3 Q -- to that period?

4 A No.

5 Q No? And did your wife work during that --

6 A She was working.

7 Q Do you believe that would -- that information was
8 disclosed to the Court, your --

9 A Yes.

10 Q -- wife's income?

11 A Yes.

12 Q Okay. What was Amstan, LLC?

13 A It was a Subway franchise.

14 Q And when did that open?

15 A The actual corporation was opened I think back in 2008,
16 but it was just not being used, and since I had it I bought
17 the Subway under that corporation.

18 Q And what happened to the Subway restaurant?

19 A It was just --

20 THE COURT: Can you hang on one second? Did you
21 just say that you had no earnings within six months of the
22 filing of bankruptcy?

23 THE WITNESS: Yeah, before the bankruptcy, yeah.

24 THE COURT: So when you -- on one of your amended
25 schedules where you show you earned \$15,129 --

1 THE WITNESS: That was in --

2 THE COURT: -- from Amstan --

3 THE WITNESS: -- 2012. My last day in Amstan was
4 November 2012, 11/20 is when I was evicted. So I had earned
5 that -- during that year. I had taken -- I would pay myself
6 by check.

7 THE COURT: And your wife's income was from what
8 entity?

9 THE WITNESS: She worked for a different -- she
10 worked for Monarch Realty Holdings. It's another company,
11 none of my companies.

12 THE COURT: Do you have anything to do with
13 Monarch?

14 THE WITNESS: No, not at all.

15 THE COURT: Any relative of yours have anything to
16 do with Monarch?

17 THE WITNESS: No, none.

18 THE COURT: Post-filing have you earned any money
19 from any of these companies?

20 THE WITNESS: No. From these companies, no.

21 THE COURT: Did you earn any money from anything?

22 THE WITNESS: Not -- no. Only -- I mean, you're
23 saying after filing?

24 THE COURT: Do you earn any money today?

25 THE WITNESS: Yeah. Now, I mean, I'm doing -- I'm

1 trying to -- like I said I was telling you I'm trying to do
2 wholesale through this company of like rice products. So I
3 haven't really earned anything significant --

4 THE COURT: And you own that company?

5 THE WITNESS: Yeah. I have a partner in it.

6 THE COURT: Well, if you've never earned any money
7 for the years leading up -- where did you get the money to
8 start a company?

9 THE WITNESS: My partner.

10 THE COURT: So you contributed no money to it?

11 THE WITNESS: No.

12 THE COURT: And how much do you own of the
13 company?

14 THE WITNESS: 50/50. It was -- I mean, my contact
15 and ideas and he was -- he just came on board as the
16 financial --

17 THE COURT: So he put up all the money?

18 THE WITNESS: Yeah. He -- he put in the money.

19 THE COURT: Okay. I'm just curious. Why did he
20 put up all the money for somebody who's never earned any
21 money?

22 THE WITNESS: He's a friend of mine and we -- you
23 know --

24 THE COURT: Yeah. But you have a track record
25 that shows you don't earn a penny.

1 THE WITNESS: Yeah.

2 THE COURT: You've been completely unable to earn
3 any money according to you for a number of years. Why is
4 the guy backing you in a business?

5 THE WITNESS: I mean, he believed that we could
6 make it work.

7 THE COURT: Why? You've never earned -- you've
8 never successfully done anything?

9 THE WITNESS: I know. I don't know. He just --
10 he believed in me. I guess he just wanted to see it happen.
11 He was looking to diversify. He's in the cell phone
12 business and he's just looking to diversify. So he came in
13 with me. He wanted to try something new.

14 THE COURT: Because you have a good track record?

15 THE WITNESS: No, not really track record, but,
16 you know, he didn't really look at my track record. He's a
17 friend of mine and he just came in as a friend, I guess.

18 THE COURT: So your friend -- how much did he
19 invest?

20 THE WITNESS: Total I would have to look at the
21 exact numbers, maybe close to like \$60,000 or more.

22 THE COURT: And does the business make money?

23 THE WITNESS: We make -- not -- we're not
24 profitable yet, but we look to be hopefully.

25 THE COURT: Do you have a house?

1 THE WITNESS: I do. Yeah.

2 THE COURT: What's your mortgage payments?

3 THE WITNESS: Right now it's 2,300 and change.

4 It's -- we had to do a modification.

5 THE COURT: Does that include taxes?

6 THE WITNESS: Yeah. We -- we're not living in the
7 home right now. We're renting our house because we couldn't
8 really afford it when we were living there.

9 THE COURT: When did you buy it?

10 THE WITNESS: I bought it in 2006 or -- yeah,
11 2006.

12 THE COURT: So where did you get the money to keep
13 paying the mortgage when you went through bankruptcy?

14 THE WITNESS: We didn't. That's why we had to do
15 the modification. We weren't paying it for several --

16 THE COURT: Were you renting it when you went
17 through bankruptcy?

18 THE WITNESS: Yeah. I believe -- we rented this
19 in --

20 THE COURT: So where's the income from that rental
21 shown on your schedules?

22 THE WITNESS: I don't know. Is it -- did you list
23 that?

24 THE COURT: No. I can tell you it's not there.

25 THE WITNESS: When did we file this -- when did I

1 -- no. Actually, I rented this in 2014.

2 THE COURT: Oh, so you --

3 THE WITNESS: Yeah. So --

4 THE COURT: So how did you pay for the mortgage
5 when you weren't renting it?

6 THE WITNESS: I mean, we would always -- I mean,
7 there were some things we could pay, some things we
8 couldn't, and we weren't -- like I said we were not
9 consistent paying our mortgage. We had to do a
10 modification.

11 THE COURT: But if you had no income, how do you
12 choose what you're paying?

13 THE WITNESS: Well, my wife had income. She was
14 working.

15 THE COURT: So her \$85,000 paid for the BMWs and
16 the house --

17 THE WITNESS: Well, the BMW didn't have a loan on
18 it. There was no loans on my car.

19 THE COURT: How did you buy it?

20 THE WITNESS: That -- my mother-in-law when we
21 first got married she -- my in-laws bought it as a gift for
22 us.

23 THE COURT: Okay.

24 BY MR. MCCAFFREY:

25 Q Speaking of the cars, Mr. Abraham, Mr. Gaffney asked

1 you about them. And he -- it was pointed out in the
2 schedules that they're both listed as yours, as the husband,
3 and you own them, right?

4 A Right.

5 Q The titles are in your name?

6 A Yes.

7 Q Does your wife use one of those cars?

8 A No.

9 Q No?

10 A The BMW I use and the other one is a van.

11 Q What is the van used for?

12 A It's not being used.

13 THE COURT: Who bought those for you?

14 THE WITNESS: The van was also like my in-laws and
15 every -- they just gave me, you know --

16 BY MR. MCCAFFREY:

17 Q When you had the Subway restaurant, were you earning
18 money?

19 A Just that little money that I had taken. Whenever I
20 could deposit a check I would, but for the most part, no.

21 Q What's the corporation that you're currently doing this
22 rice importing business under now?

23 A Asian Foods and Produce.

24 Q Had that been known by another name previously?

25 A Yes. Ambient Pharmaceuticals and Services.

1 MR. MCCAFFREY: Your Honor, this is one of the not
2 agreed upon exhibits that I would like to offer into
3 evidence. And I'll try to lay the foundation for it first,
4 but I just wanted to bring that to the Court's --

5 THE COURT: What exhibit number?

6 MR. MCCAFFREY: -- attention. I submitted it to
7 the Court in my --

8 THE COURT: Right.

9 MR. MCCAFFREY: -- separate package as --

10 MR. GAFFNEY: Is it Exhibit C?

11 MR. MCCAFFREY: Yes. Defendant's Exhibit C.

12 THE COURT: C?

13 MR. MCCAFFREY: C.

14 THE COURT: Okay.

15 MR. MCCAFFREY: There -- there are three different
16 printouts from the Department of State. The first one I
17 would ask to focus on -- may I approach the witness?

18 THE COURT: Sure.

19 BY MR. MCCAFFREY:

20 Q Mr. Abraham, do you recognize this?

21 A Yes.

22 Q Can you tell the Court what it is?

23 A Asian Foods and Produce Distributors.

24 Q Whose company is that?

25 A It's myself and a partner.

1 Q Okay.

2 MR. MCCAFFREY: And, Your Honor, I would ask it to
3 be accepted into evidence --

4 THE COURT: I'm trying to find it. What --

5 MR. MCCAFFREY: I'm sorry. It's --

6 THE COURT: The first one I have is Amstan, LLC.

7 MR. MCCAFFREY: Yes. So it should be --

8 MR. GAFFNEY: It's the third one, Your Honor.

9 MR. MCCAFFREY: -- the third one back.

10 THE COURT: What about the first one, are you
11 going to introduce that?

12 MR. MCCAFFREY: I intend to introduce all three of
13 them in a day, Your Honor.

14 THE COURT: All right.

15 MR. MCCAFFREY: I don't mean to go out of turn,
16 but --

17 THE COURT: We'll go to the third.

18 MR. MCCAFFREY: -- we've been focusing on Asian.

19 THE COURT: Did -- did Asian Food --

20 MR. GAFFNEY: Your Honor --

21 THE COURT: Did this entity exist prior to the
22 time you filed bankruptcy?

23 MR. MCCAFFREY: Yes. From -- reading from the
24 record it shows that it was converted, if you will, from
25 Ambient which existed as of September 30th, 2011 and it

1 changed names to Asian Foods and Produce Distributors on May
2 17th, 2013 approximately before filing.

3 THE COURT: So the entity in which his friend
4 invested was -- was Ambient, not Asian. Asian is the
5 successor to Ambient. Is that what you're saying?

6 MR. MCCAFFREY: Asian is the successor to Ambient.
7 Yes. However --

8 THE WITNESS: He -- no. He invested in the Asian
9 Food and -- Ambient, there was nothing happening with both
10 Ambient or Asian Foods and then --

11 THE COURT: Is Asian a new entity or is it a
12 successor entity?

13 THE WITNESS: No. It's a -- it -- the name of
14 Ambient Pharmaceuticals and Services was changed to --

15 MR. MCCAFFREY: I think the proper term is
16 successor.

17 THE WITNESS: Successor. Right.

18 MR. MCCAFFREY: It changed.

19 THE WITNESS: Right.

20 THE COURT: What's your objection?

21 MR. GAFFNEY: I -- actually, I wanted to stand up
22 to let you know I have no objection to this --

23 THE COURT: I would think --

24 MR. GAFFNEY: -- any of these documents.

25 THE COURT: I would think that.

1 MR. GAFFNEY: If they want -- if he wants them
2 admitted into evidence, it's fine.

3 THE COURT: Yeah. No. I would like them in the
4 record myself. So, yes, they'll be admitted.

5 (Defendant's Exhibit Number C admitted)

6 BY MR. MCCAFFREY:

7 Q When did Asian Foods and Produce Distributors begin to
8 do business in a profitable way, if at all?

9 A Well, it's not profitable, but we started December of
10 2013. Yeah. But it's -- I mean, it's still not profitable.

11 Q When you filed the bankruptcy in August of 2013 --

12 THE CLERK: We're getting static over the system.
13 Can I shut it down? I -- I hear static. I don't know if
14 it's getting picked up.

15 MR. MCCAFFREY: I hear it myself.

16 THE COURT: Excuse me.

17 MR. MCCAFFREY: I said I hear it myself.

18 MR. GAFFNEY: I've been hearing it off and on.

19 THE CLERK: It could be the papers. Can you take
20 --

21 THE COURT: Move the papers away.

22 MR. MCCAFFREY: Oh, okay. Is that better?

23 THE CLERK: A little better, yes.

24 THE COURT: All right. Let's go.

25 MR. MCCAFFREY: All right.

1 BY MR. MCCAFFREY:

2 Q What was the status of Ambient Pharmaceuticals and
3 Services when you filed the bankruptcy?

4 A It was just an idea. We didn't do anything with it.

5 Q Did it ever make any money?

6 A No. It never operated at all.

7 Q Referring, which is also Exhibit C, Your Honor, within
8 the Division of Corporations printouts to Abramini Imports.

9 MR. MCCAFFREY: I don't know if it's necessary to
10 go through the format with the witness, Your Honor. If the
11 Court would just take notice that next to where it says,
12 "current entity status" it says "inactive" and "dissolved by
13 proclamation as of January 27th, 2010."

14 THE COURT: Is your argument that the company
15 existed on the date that the petition was filed, but was
16 inactive, or the company didn't exist?

17 MR. MCCAFFREY: That it did not exist.

18 THE COURT: So if it didn't exist, why do you need
19 -- what's the purpose of --

20 MR. MCCAFFREY: Well, he was -- it was -- he was -
21 - on the hostile direct it was questioned, I believe, Your
22 Honor, Abramini Imports, and it seems to be -- I mean, the
23 nature of the proceeding is to find out, I think, in
24 essence, whether or not Mr. Abraham has intentionally --

25 THE COURT: But clearly he did own it at least up

1 till January 27th, 2010.

2 MR. MCCAFFREY: Yes, Your Honor. And I believe
3 the statement of financial --

4 THE COURT: All right. We'll let it in. We'll
5 admit it.

6 MR. MCCAFFREY: -- affairs did require him to
7 disclose this thing for six years.

8 THE COURT: Right.

9 MR. MCCAFFREY: However, I -- well, I'll say --
10 we'll save that for our closing statement.

11 THE COURT: Well --

12 MR. MCCAFFREY: I'm just trying to -- I'm bringing
13 up certain points, Your Honor.

14 THE COURT: You want to admit all of Exhibit C,
15 correct?

16 MR. MCCAFFREY: Yes.

17 THE COURT: And counsel has no objection, then.

18 MR. MCCAFFREY: Okay. Yes.

19 THE COURT: So all of Exhibit C is in.

20 MR. MCCAFFREY: Okay.

21 THE COURT: Once all of Exhibit C is in, the
22 witness has already testified that he owns these things and
23 they weren't on his schedules. I'm not sure what's left
24 here. What's left here? What's left to this 727 case?

25 MR. MCCAFFREY: Okay.

1 THE COURT: I mean, I'll let you go on asking him
2 questions. I'm not in my own mind sure what we're doing
3 now.

4 MR. MCCAFFREY: Well -- all right. Just to answer
5 Your Honor's question, I don't know, you know, about
6 turnovers, maybe saving it for an introductory statement or
7 ending statement.

8 THE COURT: You don't have to save it. It's a
9 simple question. I've written decisions on it --

10 MR. MCCAFFREY: I don't think --

11 THE COURT: -- which hold --

12 MR. MCCAFFREY: I'm trying to establish -- and
13 I'll -- so I'll say it in an oral --

14 THE COURT: Just say it.

15 MR. MCCAFFREY: -- form.

16 THE COURT: Just say it.

17 MR. MCCAFFREY: That Mr. Abraham -- there are
18 mistakes on the petition. Quite frankly -- and much to my
19 chagrin and I tried to do very well. I think we were
20 implementing the best case at the time -- there were
21 mistakes. I looked to correct them. I think in no way,
22 shape or form has Mr. Abraham or his wife ever intentionally
23 with any intent to deceive this Court withheld anything. He
24 has no further assets than what he has disclaimed. He was
25 not working. He -- as Mr. Gaffney astutely pointed out,

1 yes, he has a business degree and he's failing and failing
2 over and over again, hence his bankruptcy filing.

3 THE COURT: But as a matter of fact now both
4 parties have agreed, or at least the record reflects --
5 forget what you agree -- that there were three amendments --
6 two amendments to the original petition. The original was
7 completely lacking, then there was a second amendment which
8 was partially lacking, and then the third one which maybe
9 full or not.

10 But as a matter of law, the fact that he filed
11 under oath schedules that were false and misleading as
12 admitted and as part of the record. He knowingly signed it,
13 wasn't in a comma. He signed it. He is a man who has a
14 degree so he has some relative intelligence. He admitted he
15 read it, maybe not as well, but he read it. I wrote the
16 Nazzarro (ph) decision in Desabier (ph) and the Arique (ph)
17 decision which seem to me to be directly on point.

18 So I'm trying to figure out why there's anything
19 left in this case.

20 MR. MCCAFFREY: Your Honor also wrote the
21 Rockstone (ph) decision in which Your Honor said that it
22 held, ruled, and I think it was in the part of the holding
23 and not a dictum that it has to have -- in order to be not
24 dischargeable it has to be an intent to deceive and fraud or
25 a complete reckless and cavalier disregard. And I'm here to

1 make the case that Mr. and Mrs. Abraham, or specifically the
2 defendant, did no such thing.

3 THE COURT: I understand that. So --

4 MR. MCCAFFREY: And --

5 THE COURT: -- do you --

6 MR. MCCAFFREY: -- in the Rockstone case the man
7 had three Viper cars worth hundreds of thousands of dollars
8 in his garage. Mr. Abraham is a young man, you know, trying
9 to make his way and then -- and really we're here --

10 THE COURT: I'm not -- sir, I'm not saying what
11 the answer is.

12 MR. MCCAFFREY: Okay.

13 THE COURT: I'm just saying that for the issue
14 before the Court there are no issues left other than for me
15 to determine on the record from the record whether this is a
16 case that fits within Nazzarro or not because there are no
17 issues anymore as to whether or not because there are no
18 issues anymore as to whether or not what was -- that the
19 schedules were false. There's no issue he read them.
20 There's no issue he signed them. There's no issue that he
21 did it multiple times. There's no issue he consulted with
22 counsel.

23 So the question for the Court is whether I believe
24 from the record that that demonstrates something that's
25 liable under 727 or not. But I don't think there's a lot

1 else to do in this case. There's no purpose in the 523
2 really, depending on what I do on the 727.

3 MR. MCCAFFREY: Okay.

4 THE COURT: Would you agree?

5 MR. GAFFNEY: I would agree with that if you rule
6 in my favor on the 727, but obviously I would like to
7 conduct my case in chief --

8 THE COURT: No. I --

9 MR. GAFFNEY: -- on that point.

10 THE COURT: I understand that. But I'm just
11 laying the groundwork here. The only issue on the 727 is
12 whether I believe that this -- that he operated in a manner
13 that is -- which is (indiscernible) over 727. The
14 underlying facts are all established now. There's no
15 question about the petition. There's no question about the
16 schedules. There's no question about whether he signed it.
17 There's no question what he knew. None of those are issues
18 anymore. It's all in the record. There's no question that
19 he owned the entities that weren't disclosed.

20 So the only question is whether I believe that
21 this debtor did that in a manner that fits within the
22 statute of 727 or not. There's no factual questions left.
23 There's not even questions of law left. I just have to make
24 that decision.

25 MR. MCCAFFREY: I agree as -- it's a pretty blank

1 on the canvas. However, I would like to reiterate just --
2 and I know that Your Honor is astutely listening to all the
3 proceedings. But that when we use say, for instance,
4 disclosure, maybe something wasn't put in the right place,
5 but in his original statement of financial affairs under
6 Article -- excuse me -- under paragraph 21 Amstan, LLC,
7 Amstan Real Estate, and Asian Foods were all disclosed.
8 Their existence wasn't hidden. It was in a wrong paragraph.

9 You know, I -- my plea to the Court is that it's a
10 mistake, but not one that was intentionally meant to
11 deceive, hide assets, or -- you know, because he has any
12 nefarious intent here.

13 THE COURT: All right. I got that. I understand
14 that's the position that you guys have, that he did it but
15 he didn't mean it. So I don't need any more on the 727.

16 MR. MCCAFFREY: Well -- but if I may, just --

17 THE COURT: You can finish building whatever
18 record you want.

19 MR. MCCAFFREY: For the record, I --

20 THE COURT: That's fine.

21 MR. MCCAFFREY: -- you know, also because we --
22 well, as Your Honor stated, I think that the 2011 and '12
23 tax returns were part of the joint exhibits, although I just
24 want to -- for housekeeping I think the book that I had
25 gotten from Mr. Gaffney --

1 MR. GAFFNEY: Was sent out before I got those from
2 you.

3 MR. MCCAFFREY: Okay. So I just wanted to make
4 sure that they are part of the Court's record as a joint
5 because I know that I sent them in my defense exhibits which
6 --

7 THE COURT: What exhibit will it be?

8 MR. MCCAFFREY: That would be the --

9 MR. GAFFNEY: Exhibit Y.

10 MR. MCCAFFREY: That would be Y and it's marked as
11 Y, but it --

12 THE COURT: I have Y. I have the tax returns.

13 MR. MCCAFFREY: Okay. Yeah. The tax returns --

14 THE COURT: And all these exhibits are coming in
15 now without objection, correct?

16 MR. GAFFNEY: Not all of them. I object to
17 Exhibits A and B --

18 THE COURT: Well, sir, if you -- when you have a
19 -- your direct case are you going to put anybody on other
20 than this witness?

21 MR. MCCAFFREY: Earlier I was planning on calling
22 Amy Abraham, and she's --

23 THE COURT: If not, we'll go through the exhibits
24 now. If you intend to call somebody else, I'll go through
25 it when you put your own case on.

1 MR. MCCAFFREY: I would still like to call Amy
2 Abraham.

3 THE COURT: All right. That's fine. So we'll
4 wait on the exhibits -- on your exhibits.

5 MR. MCCAFFREY: Okay.

6 THE COURT: But we have admitted now Exhibit C
7 without objection --

8 MR. MCCAFFREY: Right.

9 THE COURT: -- so that's part of the record.

10 MR. MCCAFFREY: And Y is clearly there, the tax
11 returns. So I don't want to belabor the Court, but
12 continuing with the pattern that we have at the moment, Your
13 Honor, I would like to point out to the Court through the
14 witness or directly to Your Honor that within these tax
15 returns, particularly the 2012 tax return, is listed in
16 Schedule C, profit and loss from business, Amstan, LLC.
17 These tax returns were provided to Mr. Mendelsohn (ph), the
18 Chapter 7 trustee.

19 I know I make that statement. Now I -- I can't
20 completely verify that. I asked Mr. Mendelsohn to verify
21 that. He said he doesn't keep a direct record and he's not
22 allowed to keep tax returns so he can't overtly confirm
23 that. I asked him to potentially put a letter onto the ECF.
24 As he stated to me that was his -- it's his -- no debtor
25 goes through and gets a discharge without him having seen

1 their prior two year tax returns. But he declined. I
2 thought it best not to go through -- look to subpoena him to
3 come here today.

4 But, again, I stated this on behalf of my client
5 for the purpose of revealing to the Court that, you know,
6 his income, his wife's income, his assets and liabilities
7 were all disclosed to the trustee and, therefore, you know,
8 via the trustee to this Court.

9 MR. GAFFNEY: Your Honor, just for the purpose of
10 maintaining the record I would like to enter an objection to
11 Mr. Mendelsohn's testimony. It's inadmissible hearsay.

12 THE COURT: It's not for any value. I mean, it
13 can't be for the truth of it. So that's your view of what
14 Mr. Mendelsohn may or may not think, but I don't know what
15 that means.

16 I'm trying to figure out on these tax returns,
17 just looking at it briefly --

18 MR. MCCAFFREY: 2011 --

19 THE COURT: -- it shows --

20 MR. MCCAFFREY: -- or '12?

21 THE COURT: 2012. That's the most recent?

22 MR. MCCAFFREY: Yes. Well, that -- for the
23 record, yes.

24 THE COURT: He filed 2013?

25 MR. MCCAFFREY: He has. I have them.

1 THE COURT: And yet that's not part of this?

2 MR. MCCAFFREY: Well, no, it wasn't asked for. We
3 filed in August --

4 THE COURT: All right.

5 MR. MCCAFFREY: -- 2013.

6 THE COURT: It shows on line 14 a loss of
7 \$231,683. For businesses that weren't doing any business
8 how could you lose that much money? What's that loss
9 represent if there was no business going on?

10 MR. MCCAFFREY: Well, to do my best at it, Your
11 Honor, you know, I --

12 THE COURT: I don't think you're the one to ask --

13 THE WITNESS: That was --

14 THE COURT: -- about the tax return.

15 THE WITNESS: That -- I believe that what they
16 need -- did was because I was being -- I had lost the store,
17 so all the loan that was on that -- on that place, the 200
18 -- it was 235,000 or 231,000 at the time. That was -- I
19 believe that's what that 231 loss is because I was evicted
20 in November of 2012.

21 THE COURT: You took as a loss the loan you didn't
22 pay?

23 THE WITNESS: I don't know exact -- I have to
24 confirm with my accountant, but I believe he --

25 THE COURT: But where else would you lose

1 \$231,000?

2 THE WITNESS: Yeah. That --

3 THE COURT: If you say you had a business that
4 wasn't doing any business.

5 THE WITNESS: Right. I mean, it was -- when you
6 say it wasn't -- it was doing business, but it was just a
7 loss -- I had lost money there.

8 THE COURT: Which business was this that was doing
9 business?

10 THE WITNESS: Amstan, LLC, the Subway franchise.

11 THE COURT: But you weren't -- you got no money
12 from it?

13 THE WITNESS: Right. I mean, that's --

14 THE COURT: So that the whole -- the loss was an
15 operating loss? What was the loss from?

16 THE WITNESS: I don't know how he categorized it.

17 I don't -- I would have to talk to him about it. But --

18 THE COURT: You don't know that? Okay.

19 Now you also show on line 38 --

20 THE WITNESS: Is it --

21 THE COURT: -- 100,000 --

22 THE WITNESS: -- is it in here that I could look
23 at, in the book?

24 MR. GAFFNEY: Not in that book, no.

25 THE WITNESS: No?

1 THE COURT: Oh, give him your -- it's your
2 exhibits.

3 MR. MCCAFFREY: Yeah. Let me give him the
4 exhibit.

5 (Pause)

6 THE WITNESS: In Form 4797, I think it says -- I
7 think that's where it's showing that loss, the Subway
8 franchise.

9 THE COURT: What?

10 THE WITNESS: In the Form 4797 in the tax return.

11 MR. MCCAFFREY: It's about eight pages in.

12 THE COURT: So your wife reported income, gross
13 income in 2012 of \$70,700 --

14 THE WITNESS: On the --

15 THE COURT: -- according to your tax returns and
16 her W2s, and her employer was Convermat (ph) Corporation --

17 THE WITNESS: Right.

18 THE COURT: -- Great Neck.

19 THE WITNESS: Convermat.

20 THE COURT: What does that have to do with
21 Monarch?

22 THE WITNESS: So what happened, they -- she had --
23 she's -- she worked for Monarch. She was being paid from
24 Convermat Corporation, but now they switched over. They're
25 paying her now from Monarch Realty. It's both the same

1 owners of the companies. Convermat is their main business
2 and their real estate division is Monarch Realty. I believe
3 -- they wholesale paper or tissue paper or something like
4 that.

5 THE COURT: Okay. When did you open this Subway
6 -- that Subway approximately?

7 THE WITNESS: It was April of 2010.

8 THE COURT: So for 2011 you showed a total loss of
9 \$13,000 from it.

10 THE WITNESS: In 2011?

11 THE COURT: And in 2012 you showed 200-and-some-
12 dod-thousand-dollar loss.

13 THE WITNESS: I -- yeah. I mean, I don't know how
14 my account did it, but I don't know if it's --

15 THE COURT: You don't know how your accountant did
16 it?

17 THE WITNESS: Yeah. When he says the losses, I
18 think that's because I lost the place when I was evicted.

19 THE COURT: No. If you look within the schedules
20 it will show the itemized losses from royalties and
21 everything -- or expenses.

22 And in 2011 you're Stanley Abram (sic), correct?

23 THE WITNESS: Abraham, yes.

24 THE COURT: Abraham. You showed an income of
25 \$587,977.

1 THE WITNESS: The gross on the store, yes.

2 THE COURT: No. This is your tax return.

3 THE WITNESS: Yeah, for Amstan, LLC? Are you
4 looking at the --

5 THE COURT: I don't know what it's for.

6 THE WITNESS: -- profit and loss?

7 THE COURT: I can't keep up with this. I can't
8 tell you what it's from.

9 MR. MCCAFFREY: This is --

10 THE COURT: You showed an ultimate loss of 13 --
11 you had --

12 MR. MCCAFFREY: Your Honor, if I may --

13 THE COURT: -- gross income of 352,000 in 2011.

14 MR. MCCAFFREY: If I may, the debtor and his wife
15 filed a joint tax return in 2011. This is just the Schedule
16 C profit and loss statement --

17 THE COURT: Right.

18 MR. MCCAFFREY: -- for the business. Okay.

19 THE COURT: But there's still \$582,000 from the
20 business. Your petition and schedule show the most you ever
21 made was 15,000.

22 THE WITNESS: I mean, that's gross income. I
23 think what you're talking about is the next -- what I --

24 THE COURT: I --

25 THE WITNESS: -- was able to --

1 THE COURT: I understand that.

2 THE WITNESS: -- take home.

3 THE COURT: So it shows wages of 66,000. That's
4 not you even though it's in your tax return?

5 THE WITNESS: Where is that?

6 MR. MCCAFFREY: Line 26.

7 THE WITNESS: Oh, the wages were employees that
8 were working there.

9 THE COURT: Okay. It's part of the record. Well,
10 it may or may not be part of the record. Is there an
11 objection to this coming in?

12 MR. MCCAFFREY: No. This was --

13 MR. GAFFNEY: No. This was part of the joint
14 exhibits.

15 THE COURT: Oh, okay, good.

16 MR. MCCAFFREY: As Y.

17 THE COURT: So it's part of the record so I'll
18 deal with it.

19 (Pause)

20 THE COURT: Okay. You can continue.

21 BY MR. MCCAFFREY:

22 Q Mr. Abraham, do you own any of the real property other
23 than what was listed in your petition?

24 A No.

25 Q And that is the file -- the house --

1 A My house. Yeah.

2 Q -- in New Hyde Park?

3 A And there was two lots of land in Florida that I had
4 bought.

5 Q Have you ever owned any other real property?

6 A No.

7 Q Do you own any vehicles other than the two listed on
8 your petition?

9 A No.

10 Q Do you have any other assets of substantial value --

11 A No.

12 Q -- paintings, stocks --

13 A No.

14 Q -- bonds, cash in your house?

15 A No.

16 (Pause)

17 MR. MCCAFFREY: Your Honor, I have no further
18 questions of Mr. Abraham at this juncture considering trying
19 to -- that we're focusing on the same -- as your -- on the
20 727 issue of the case.

21 THE COURT: All right. That's what -- if there's
22 a -- if you want to call him in your case, you can call him.

23 MR. MCCAFFREY: Okay.

24 THE COURT: It's a little --

25 MR. GAFFNEY: I have a --

1 THE COURT: -- disjointed, but you can have cross

2 --

3 MR. GAFFNEY: I have a brief follow up.

4 THE COURT: -- or redirect. I'm sorry.

5 REDIRECT EXAMINATION

6 BY MR. GAFFNEY:

7 Q Just so that the record is clear, the corporation that
8 you use now for your import business that you're trying to
9 do with your partner, that's the Asian Foods and Produce?

10 A Asian Foods and Produce, correct.

11 Q Which is the same entity as Ambient Pharmaceutical,
12 right? It --

13 A Yeah. It was --

14 Q -- just changed the name?

15 A I just changed the name. Right.

16 Q And Ambient Pharmaceutical was founded in 2011?

17 A Right.

18 Q And the name change occurred in May of 2013, right?

19 A Correct.

20 Q When did your partner give the money?

21 A I think it was in January -- January -- December or
22 January of -- January of 2014, I believe.

23 Q When did he tell you he was going to give you the
24 money?

25 A Around that same time we were -- you know, we were --

1 like I said with Ambient we wanted to do the pharmaceutical
2 packaging, but it never panned out. We never did anything
3 with it, and then we had talked about maybe doing this
4 business, you know, and we were doing kind of some research
5 on trying to find people who can supply rice and then I --
6 you know, I had approached him around that time.

7 Q How long did it take you to work out the details of the
8 membership agreement?

9 A Not long. I mean, it was --

10 Q Two months?

11 A Like I said he was my friend so it was within the same
12 time -- time frame.

13 Q Two months, three months, less?

14 A Probably less, yeah. I mean, I think I approached him
15 around the same time we started actually operating.

16 Q Did you claim your interest in Asian Foods and Produce
17 as exempt on your Schedule C?

18 A I'm not sure. I don't know.

19 Q Well, the record reflects that you didn't?

20 A I didn't or I did?

21 Q Yeah. You -- you can take a look. It's in Joint
22 Exhibit A.

23 THE COURT: Have him look at it, please.

24 (Pause)

25 THE WITNESS: Where am I looking?

1 MR. GAFFNEY: Look at Schedule C.

2 THE WITNESS: Okay.

3 BY MR. GAFFNEY:

4 Q Tell me where it lists Asian Foods and Produce as an
5 exempt asset.

6 A I don't see it listed there.

7 Q Huh?

8 A I don't see it listed there.

9 Q That's because it's not.

10 A Okay.

11 Q And that's because that -- that schedule was generated
12 automatically by a computer program that takes information
13 from your Schedule B and allows you to assign exemptions to
14 it.

15 Go back to your Schedule B, line 13. Does it list
16 Asian Foods and Produce there?

17 A No, it doesn't.

18 Q When did you rent your house?

19 A I think it was March of 2014 or --

20 Q Is that -- that's when the tenants moved in?

21 A March or April, yeah.

22 Q How long was it on the market?

23 A I mean, it wasn't very long. I just asked around. I
24 wanted somebody we knew so that, you know, we didn't run
25 into any issues.

1 Q So the tenants are friends of yours?

2 A They're -- I mean, I know them from someone that goes
3 to my church, and then my partner actually recommended them.

4 Q When did you and your wife decide that you needed to
5 rent the house out?

6 A I think it was the beginning of that year. We were
7 kind of debating on what we should do.

8 Q Okay.

9 MR. GAFFNEY: I have nothing further.

10 THE COURT: All right. You can step down.

11 MR. MCCAFFREY: Your Honor, may I just ask one
12 follow up question of the witness to clarify?

13 THE COURT: One.

14 MR. MCCAFFREY: Thank you.

15 RECROSS-EXAMINATION

16 BY MR. MCCAFFREY:

17 Q Did your partner give you money for Asian Foods? Can
18 you clarify that statement? What does it mean that he gave
19 you money? What happened -- you said your partner invested
20 money.

21 A He invested. Correct.

22 Q What -- be more particular. What was the nature of
23 that?

24 A He invested into the business for 50 percent of the
25 business.

1 Q And how -- what transpired? Did money go into your
2 personal account?

3 A No. Everything is in the business.

4 Q The business account?

5 A Yes.

6 Q Is he a signatory on the account?

7 A Yes.

8 Q All right.

9 MR. MCCAFFREY: No further --

10 THE COURT: You owned 100 percent of the business,
11 correct?

12 THE WITNESS: I own -- no. No. We're 50/50.

13 THE COURT: To start you owned 100 percent --

14 THE WITNESS: Yeah.

15 THE COURT: -- of the business.

16 THE WITNESS: Initially.

17 THE COURT: He gave you or he contributed capital
18 to the business --

19 THE WITNESS: Right.

20 THE COURT: -- and he got 50 percent of the
21 business.

22 THE WITNESS: Correct.

23 THE COURT: Therefore you sold 50 percent of the
24 business.

25 THE WITNESS: Right.

1 THE COURT: Thank you.

2 THE WITNESS: Okay. Should I --

3 THE COURT: You can sit down.

4 THE WITNESS: Oh.

5 THE COURT: Do you have any other witnesses, sir?

6 MR. GAFFNEY: Yes, Your Honor. The plaintiff
7 calls the plaintiff, Janet Stuart.

8 THE COURT: All right. You can have Ms. Abrams
9 come back in.

10 MR. MCCAFFREY: I'll --

11 (Pause)

12 THE CLERK: Can you please stand and raise your
13 right hand?

14 JANET STUART, WITNESS, SWORN

15 THE CLERK: Can you please state and spell your
16 name for the record?

17 THE WITNESS: Janet Stuart, J-A-N-E-T S-T-U-A-R-T.

18 THE CLERK: Okay. You can sit down, ma'am. Thank
19 you.

20 DIRECT EXAMINATION

21 BY MR. GAFFNEY:

22 Q Good morning, Ms. Stuart.

23 A Good morning, sir.

24 Q I was going to ask you your name and address, but the
25 clerk just did so we'll move on.

1 Ms. Stuart, how old are you?

2 A Seventy-eight years old.

3 Q What's your level of education?

4 A Masters' Degree from Columbia University in public
5 health.

6 Q When did you get your masters' degree?

7 A 1979.

8 Q Are you working now?

9 A No, sir.

10 Q Are you retired?

11 A Yes.

12 Q When did you retire?

13 A 2001 --

14 Q What was --

15 A -- January.

16 Q I'm sorry.

17 A January 2001.

18 Q What was the last job you had before you retired?

19 A Director of nursing.

20 Q Where?

21 A At Greater Harlem Nursing Home.

22 Q How long were you at that position?

23 A About three to five years.

24 Q Do you know the defendant, Stanley Abraham?

25 A Yes, I do.

1 Q How do you know him?

2 A I was introduced to him by his father-in-law.

3 Q Who is his father-in-law?

4 A Thomas John.

5 Q Was Thomas John his father-in-law at the time that he
6 introduced him to you?

7 A No. They weren't married yet.

8 Q Who weren't married?

9 A Mr. Abraham and --

10 Q And his wife?

11 A -- his wife.

12 Q Do you know when they got married?

13 A 2006 during the summer.

14 Q Were you at the wedding?

15 A Yes, I was.

16 Q How many people were at the wedding?

17 A I guess about 200, 250.

18 Q How did you know Thomas John?

19 A I met Thomas John in 2001 through a family friend.

20 Q And what would -- how would you describe the nature of
21 your relationship with Thomas John?

22 A It was a friendly relationship --

23 Q Did you ever --

24 A -- and a business --

25 Q -- lend him money?

1 A Yes, I did.

2 Q When did you first lend him money?

3 A May 2001.

4 Q Did he pay you back?

5 A The first seven years he did.

6 Q When did he stop paying you back?

7 A 2008 to 2010.

8 Q Did there ever come a time when you lent money to the
9 defendant?

10 A Yes.

11 Q When?

12 A August -- September 23rd, 2009.

13 Q Are you sure that's the right date?

14 A July 21st, 2009.

15 Q How much did you lend him?

16 A \$50,000.

17 Q Why did you lend him \$50,000?

18 A Well, he asked me to loan him \$75,000.

19 Q Who asked you?

20 A Stanley Abraham.

21 Q How did he ask you?

22 A Pardon me. Excuse me.

23 Q How did he ask you to lend him money?

24 A By talking to me.

25 Q Did he call you?

1 A Yes.

2 Q When?

3 A It was the -- about the middle of July 2009.

4 Q And what did he tell you about the money?

5 A I asked him what for. He said he wanted to extend his
6 real estate.

7 Q And so you lent him \$50,000?

8 A Yes.

9 Q How did you pay it to him?

10 A Would you rephrase that, please?

11 Q In what form did you give him \$50,000?

12 A It was a banker's check from me to him.

13 Q Ms. Stuart, I would like you now to flip in the binder
14 in front of you to Joint Exhibit N?

15 A What exhibit, please?

16 Q N as in Nancy.

17 A Now this document has already been entered into the
18 record as an exhibit. I would like you to just turn to the
19 end of the document. There's a section marked Exhibit B,
20 one page. Do you recognize this document?

21 A Yes, I do.

22 Q What is it?

23 A It's a cashier's check to Stanley Abraham from me for
24 \$50,000.

25 THE COURT: What was the interest rate?

1 THE WITNESS: I did not charge interest. It is
2 our custom --

3 THE COURT: Did you charge Mr. John interest?

4 THE WITNESS: Yes.

5 THE COURT: How much did you charge him?

6 THE WITNESS: At first, Your Honor, he said it --
7 I could -- he will pay \$20,000 -- 20 percent. And I said,
8 no. That's a lot. He says, okay, 15. I says, no, ten
9 percent. If you want -- you know, when you pay me back if
10 you want to add ten percent that would be alright.

11 THE COURT: Other than Mr. John and Mr. Abraham
12 here, did you ever loan any money to anybody else?

13 THE WITNESS: Yes, to my friends --

14 THE COURT: To your friends?

15 THE WITNESS: -- to my family.

16 THE COURT: Do you charge them interest?

17 THE WITNESS: No. It's our custom, Your Honor.

18 THE COURT: Excuse me.

19 THE WITNESS: It is our custom. When we lend
20 money you pay back the amount you're loaned. If you decide
21 you want to give some extra, fine. But I don't ask for it.

22 THE COURT: Do you ever get extra? Do people just
23 voluntarily give you more money back?

24 THE WITNESS: Some times, some family member.

25 THE COURT: Has anybody never -- ahs anybody other

1 than this debtor not paid you?

2 THE WITNESS: Yeah.

3 THE COURT: So you loan money at no interest to
4 people who may or may not pay you back. Is that what you
5 do?

6 THE WITNESS: That's correct because I don't ask
7 for interest.

8 THE COURT: Is there anything in writing that
9 reflects this loan?

10 THE WITNESS: Your Honor, excuse me. Which loan
11 are we talking about?

12 THE COURT: The loan to this debtor, Mr. Abraham,
13 75,000, is there anything you have in writing that shows
14 that he owes you the money?

15 THE WITNESS: Nothing other than the cashier's
16 check.

17 THE COURT: And the other folks who don't pay you
18 back, do you sue them?

19 THE WITNESS: No.

20 THE COURT: What do you do, do you just forget it?

21 THE WITNESS: Well, the other person was \$250.

22 THE COURT: But other than the \$250, have you ever
23 loaned more than \$75,000 to anybody?

24 THE WITNESS: Yes.

25 THE COURT: What's the most you ever loaned to

1 anybody?

2 THE WITNESS: To Thomas John it's \$1,086,27.

3 THE COURT: One-million?

4 THE WITNESS: Yes, over a period of two years.

5 THE COURT: And you didn't charge any interest on
6 that?

7 THE WITNESS: No. He's the one that decided he
8 wanted to pay interest. I just wanted my money back.

9 THE COURT: And he demanded to pay you more money
10 than you wanted?

11 THE WITNESS: Yeah. He said he would pay
12 interest.

13 THE COURT: So you have a million -- this -- these
14 are your funds, nobody else's, correct?

15 THE WITNESS: No. These are all my funds,
16 everything.

17 THE COURT: Okay.

18 BY MR. GAFFNEY:

19 Q Let's go off of that. Ms. Stuart, how did you earn
20 those funds?

21 A I worked several jobs. I would work a regular job, you
22 know, a seven to 7 p.m. job and at the same time I taught at
23 Long Island University, and then I opened a school that I
24 taught at, and I make jewelry. I do stain glass and a
25 couple of other things that I earn money from. I didn't'

1 have debts because my mortgage was paid. My house was put
2 -- fully paid, and I got money from my husband.

3 Q How long were you working before you retired?

4 THE COURT: Well, I -- I'm not real interested in
5 how she got the money. You really don't have to establish
6 that. I don't -- that's -- she's not the issue here. The
7 -- when you loaned the money to this debtor, Mr. Abraham,
8 did he show you any history of ever being successful in
9 anything?

10 THE WITNESS: No. I didn't ask for a history. As
11 far as I know he was doing fine.

12 THE COURT: And you didn't ask for any collateral?
13 You didn't ask for a mortgage or a note or anything?

14 THE WITNESS: No, Your Honor. I -- he worked at
15 the same real estate that I worked at so I know he was
16 getting a salary or, you know, selling houses or whatever
17 else he was doing.

18 THE COURT: And no lawyer was involved in any of
19 these transactions?

20 THE WITNESS: No.

21 THE COURT: Was there anybody else present when
22 you gave him the money or when you made the deal, whatever
23 the deal was?

24 THE WITNESS: I gave his father-in-law, Thomas
25 John, the check of \$50,000 to give to Mr. Abraham. I called

1 and asked him if he got it. He said yes.

2 THE COURT: Okay.

3 BY MR. GAFFNEY:

4 Q Ms. Stuart, was this check cashed?

5 A Yes.

6 Q How do you know?

7 A Because at the back of the check -- I have the copy.

8 It was check -- it was cashed July 22nd, 2009.

9 Q And do you recognize the signature on the back of that
10 check?

11 A Yes, sir.

12 Q Whose is it?

13 A It's Stanley Abraham's.

14 Q Now this \$50,000, was that the only amount that you
15 lent Mr. Abraham?

16 A No, sir.

17 Q How much did -- how much did you lend him in total?

18 A \$25,000 more.

19 Q When did you lend him the additional \$25,000?

20 A It was August the 3rd, 2009.

21 Q Why did you lend him the additional \$25,000?

22 A Because originally he requested 75,000 and that 25 was
23 the balance of the 75.

24 Q Did he ask you for it?

25 A Yes.

1 Q When?

2 A Towards the end of July.

3 Q How did you pay the 25,000?

4 A He gave me his account number at Citibank and I
5 transferred the \$25,000 there.

6 Q Can you flip back in the exhibit in front of you two
7 pages to Exhibit A? Backwards, the other direction, yeah.
8 Is this the record of the wire transfer going out of your
9 account?

10 A Yes. It's an account wire transfer notification.

11 THE COURT: Let's see if we can speed this up a
12 little. Do you guys stipulate that this -- Ms. Stuart gave
13 your client -- and I use that term loosely -- 70 -- he
14 received \$75,000 from her?

15 MR. MCCAFFREY: Received. We recognize the
16 transaction, yes.

17 THE COURT: And to date no monies have been paid
18 back?

19 MR. MCCAFFREY: My client has not paid Ms. Stuart
20 any money.

21 THE COURT: Okay.

22 MR. MCCAFFREY: But my position is that --

23 THE COURT: Well --

24 MR. MCCAFFREY: -- my client --

25 THE COURT: -- that's a different question. I'm

1 just -- factually, there's no issue that Ms. Stuart gave
2 your client -- transferred --

3 MR. MCCAFFREY: Transferred.

4 THE COURT: -- I'll use that word -- to your
5 client \$75,000. And that as of this date your client hasn't
6 paid back any of that 75. Whether he was required to or not
7 is a separate issue. But you stipulate that he got it and
8 hasn't paid her back any money yet.

9 MR. MCCAFFREY: Yes.

10 THE COURT: Okay.

11 BY MR. GAFFNEY:

12 Q Ms. Stuart, according to the terms of your agreement
13 with Mr. Abraham, when was he supposed to pay you back?

14 A September 2009.

15 Q What did you do when he hadn't paid you back?

16 A I saw him at the office and I asked him for my money.

17 Q And what did he say?

18 A He doesn't know me. He doesn't know why I'm asking him
19 for money. He didn't get -- doesn't have any money from me.

20 THE COURT: He said he doesn't know you?

21 THE WITNESS: Yes.

22 THE COURT: Wasn't he the one that asked you for
23 the money?

24 THE WITNESS: Yes.

25 BY MR. GAFFNEY:

1 Q Weren't you at his wedding?

2 A Pardon me.

3 Q Weren't you at his wedding? You were at his --

4 A Yes. Yes.

5 Q -- wedding, right?

6 A Yes. I used to see him all the time at the office.

7 THE COURT: What office? Hold it. What office?

8 THE WITNESS: The real estate office where he
9 worked and where I worked.

10 THE COURT: You both worked at the same real
11 estate firm?

12 THE WITNESS: Yes.

13 THE COURT: What firm was that?

14 THE WITNESS: What did they call it, American
15 Gardens -- American Gardens --

16 THE COURT: So in 2009 he worked in this real
17 estate office?

18 THE WITNESS: Yeah. He was there. He had an
19 office there.

20 THE COURT: What did he do?

21 THE WITNESS: I was supposed to sell real estate.

22 THE COURT: Excuse me?

23 THE WITNESS: I was a real --

24 THE COURT: Not you, him. Do you know what he
25 did?

1 THE WITNESS: Well, he was a broke -- a mortgage
2 broker. That's what he said.

3 THE COURT: Okay.

4 BY MR. GAFFNEY:

5 Q Who owned that real estate company?

6 A Thomas John, his --

7 Q Thomas John is the defendant's --

8 A -- his father-in-law.

9 Q -- father-in-law. Did you ever sue Thomas John and the
10 defendant?

11 A Yes, I did.

12 Q When?

13 A This was in 2010.

14 Q 2010?

15 A 2010 I hired an attorney. So it would be about -- I
16 think I hired the attorney around March and the three
17 defendants got letters from my attorney regarding the loan.

18 THE COURT: When you sued him had you stopped
19 working there?

20 THE WITNESS: Yes. I stopped working in 2001.

21 THE COURT: No. You said you were in the real
22 estate office in 2009.

23 THE WITNESS: Yeah.

24 THE COURT: When did you stop working at that real
25 estate office?

1 THE WITNESS: Around about 2011.

2 THE COURT: And when you stopped work was the
3 debtor still working there?

4 THE WITNESS: Yeah.

5 THE COURT: So he had an office and he was working
6 in 2011?

7 THE WITNESS: By that time I -- no. That time
8 they had moved to Hillside Avenue. The office was at
9 Hillside Avenue and he had --

10 THE COURT: But to your knowledge --

11 THE WITNESS: -- a desk there.

12 THE COURT: -- he was still working there?

13 THE WITNESS: Yeah.

14 THE COURT: Okay.

15 BY MR. GAFFNEY:

16 Q How much did you demand from Sammy Abraham in the state
17 lawsuit in 2010?

18 A \$75,000.

19 Q Did there ever come a time that you learned of the
20 bankruptcy filing?

21 A When I received a notice from the bankruptcy clerk's
22 office that there was a creditors' meeting.

23 Q When was the creditors' meeting?

24 A It was September 26, 2013 I think.

25 Q Did you attend that meeting?

1 A Yes, I did.

2 Q What time was --

3 THE COURT: 2000 -- I didn't hear her. 2000
4 what?

5 MR. GAFFNEY: '13.

6 THE WITNESS: Yeah.

7 THE COURT: Hadn't he filed bankruptcy in 2012
8 also?

9 MR. GAFFNEY: He filed in -- well, he did file in
10 2012, but I -- that case was dismissed for failure to file
11 schedules.

12 THE COURT: And the lawsuit was commenced in what
13 year?

14 MR. GAFFNEY: 2010.

15 THE COURT: So at some point in 2012 that lawsuit
16 was stayed?

17 THE WITNESS: Yeah. It was stayed.

18 MR. GAFFNEY: I would suppose it would be, yes.
19 But I don't think that -- I don't think that that previous
20 case included any schedules or a list of creditors. I don't
21 believe that Ms. Stuart ever --

22 BY MR. GAFFNEY:

23 Q Ms. Stuart, were you ever notified of the 2012
24 bankruptcy?

25 THE COURT: It doesn't matter. That's not the

1 point.

2 THE WITNESS: No.

3 THE COURT: Now his -- did you sue Mr. John as
4 well?

5 THE WITNESS: Yes, all three defendants. It's --

6 THE COURT: What happened to that case because
7 that's not stayed by the bankruptcy?

8 THE WITNESS: Well, it's stayed by the Court in
9 Queens. We asked that it would be stayed so I could
10 continue with the bankruptcy case.

11 THE COURT: Okay.

12 BY MR. GAFFNEY:

13 Q Did you attend the creditors' meeting?

14 A Yes, I did.

15 Q What time was it?

16 A I think it was at 9:30. I got there about 8, 8:30.

17 Q And where was it?

18 A It was in this building on the lower floor.

19 Q Was the defendant there when you arrived?

20 A Not as soon as I arrived, no.

21 Q But he did eventually arrive?

22 A Yes.

23 Q Did he see you there?

24 A Yes.

25 Q How do you know?

1 A Because when he saw me he looked to his wife and said,
2 Janet is here.

3 Q Where were you sitting?

4 A I was sitting in the second row of benches near the
5 table where the trustee would sit.

6 Q Was the Abrahams' case the first one called?

7 A No. I think there --

8 Q How many cases were --

9 A -- other cases.

10 Q -- called before his, do you remember?

11 A I don't recall the amount, but there were other cases.

12 Q What happened when the Abrahams' case was called?

13 A When the case was called the Abrahams went to the table
14 and the trustee said there are no witnesses. I didn't say
15 anything because he's a judge. I'm not going to interrupt a
16 judge and I did not know what the procedures were because I
17 had never been to Bankruptcy Court. So I sat there and
18 listened to what was going on and decided, Your Honor, that
19 after the case I would go to the clerk's office and find out
20 what was the procedure that -- from then on.

21 And they told me I can get the forms to fill out
22 and it's \$293. I paid it. I took the forms home with me
23 and I came back October the 11th and I gave them the forms
24 and they were filed then. They stamped it and it was filed
25 then.

1 THE COURT: Is this a no asset case?

2 MR. GAFFNEY: According to the docket, yes.

3 MR. MCCAFFREY: Yes, Your Honor. There were no
4 discovery of assets.

5 THE COURT: So she never had to file a proof of
6 claim. Okay. All right. Go ahead.

7 THE WITNESS: Pardon me.

8 THE COURT: Nothing. Go ahead.

9 BY MR. GAFFNEY:

10 Q Ms. Stuart, if you had had the opportunity, is there
11 anything you would have told the trustee at the meeting?

12 A Yes.

13 Q What would you have told him?

14 A I would have told the trustee that they owed me \$75,000
15 and I had not been repaid. I'm still waiting to get my
16 money.

17 Q Would you have told him about -- had you seen -- had
18 you read the bankruptcy petition at that point?

19 A I think it was just two sheets of paper I got from the
20 clerk inviting me to the meeting and just a few pages and it
21 said I didn't have to attend, but I thought I should and I
22 did attend.

23 Q Ms. Abraham (sic), in your binder can you please turn
24 to Exhibit Tab F?

25 A Excuse me.

1 THE COURT: Counsel, are you trying to establish
2 what she would have told somebody months ago? What's the
3 point of the question?

4 MR. GAFFNEY: The point of the question is that
5 the debtor knew that there were creditors there and when the
6 trustee says there are no creditors there, it -- it at least
7 speaks to his intent when he conceals that fact from the
8 trustee by not speaking up.

9 MR. MCCAFFREY: Your Honor --

10 MR. GAFFNEY: Well, there's nothing the witness
11 can --

12 MR. MCCAFFREY: Your Honor, that's not the way it
13 proceeds in the 341. The trustee says, are there any
14 creditors present.

15 THE COURT: Hold it. Do you have an objection?
16 Raise it. What's --

17 MR. MCCAFFREY: That's -- I'm -- pardon me.
18 That's my objection as to the content of the statement and
19 the factual --

20 THE COURT: Is it hearsay, is it -- give me some
21 objection. I don't want a speech.

22 MR. MCCAFFREY: Well, I believe what I'm objecting
23 to is -- it's -- it would be hearsay. Mr. -- well, Mr.
24 Gaffney is now testifying to events that happened in a room
25 that he was not in. So it's --

1 THE COURT: Well, I'm not sure he's doing that.

2 But I don't think that --

3 MR. MCCAFFREY: I don't want to interrupt you, but

4 --

5 THE COURT: What -- I'm not sure that it's
6 relevant to me whether the debtor sitting at a 341 should or
7 shouldn't advise a trustee that some party who is suing him
8 is there. I don't know what that -- a lot of other things
9 in this case -- because we've already established that we
10 have petitions, schedules that are false, the question being
11 did he intend something. We already have testimony that he
12 got the 75,000. We already have testimony that none of it
13 was -- without regard to whether it should have been paid
14 back because that will be counsel's issue -- the money has
15 gone back to this person. We have testimony that there's
16 nothing to document any of this.

17 So I think that it may cloud the record
18 unnecessarily to develop a line of questions about what a
19 person would have said at a point in time. She sued him so
20 we know what she thinks. She sued him prior to the time
21 they had filed bankruptcy and now she's bringing a complaint
22 saying it's non-dischargeable. I'm not worried about what
23 her view is. Whether she would have raised that to Mr.
24 Mendelsohn or not I don't know the point because you
25 ultimately did bring the complaint. It's not that your time

1 ran out and you didn't bring it. The complaint was brought
2 on a timely basis in this case. So I don't know that it's
3 that relevant to me the fact that she did not speak at the
4 341 or that it would have been as relevant if she said I did
5 speak and complaint to Mr. Mendelsohn then. I'm not sure
6 that that converts any -- the debtor's intent one way or
7 another.

8 MR. MCCAFFREY: It only seems to want to rub a
9 little dirt on the debtor for something he wasn't obligated
10 to do.

11 THE COURT: You're ahead of the game. You really
12 don't want to add anything right now.

13 MR. GAFFNEY: Well, Your Honor, if I may, the
14 point that I wanted to invoke was speaking to the 727 issue;
15 that the issue of the debtor's intent and I think the Court
16 should be looking at the totality of the circumstances with
17 respect to the debtor's --

18 THE COURT: Well, as a legal --

19 MR. GAFFNEY: -- composure and behavior during --

20 THE COURT: -- term totality of the circumstances
21 is to decide what the legal standard is for the 727. But
22 the 727 has to do with the filing in -- of what he put down
23 in the petition. The record reflects what we've just said
24 and it reflects that your client feels what she believes
25 which is encompassed in her complaint. The fact that she

1 would have reiterated those things to the trustee I accept -
2 - everybody accepts that. If she had another chance she
3 would stand up and tell the -- tell the story of the 341.
4 I'm not sure that colors one way or another what the legal
5 standard is, at least as this Court views it, the role of a
6 debtor in a 727. It has nothing to do with the 523.

7 MR. GAFFNEY: Yeah.

8 THE COURT: So I don't -- I mean, I would -- I'm
9 not sure of the relevance of it. I think you border on
10 hearsay problems. So I think you just go through that. In
11 other words, I want to end the questioning on that issue
12 about what she would have done at a 341 had she been asked
13 because I think by -- if we were dealing with a question
14 about whether you can file the complaint and the time -- if
15 we were a year passed --

16 MR. GAFFNEY: Right.

17 THE COURT: -- closing the 341, then I understand
18 it.

19 MR. GAFFNEY: I mean, Your Honor --

20 THE COURT: But for this purpose I don't think you
21 need it.

22 MR. GAFFNEY: -- Your Honor, it -- just if I may,
23 the defendant has by counsel raised on several occasions in
24 hearings before this case the fact that the debtor has
25 technically been issued a discharge. This action was

1 brought before the discharge deadline, but due to an error
2 in checking the boxes it only alleged a 523 claim --

3 THE COURT: But testimony is not going to change
4 that. That's an issue I have to deal with.

5 MR. GAFFNEY: Okay.

6 THE COURT: I mean, it's not all unusual or -- I
7 mean, when a complaint is on the record no discharge should
8 be grant.

9 MR. GAFFNEY: But the complaint was only alleging
10 523 at the time, so that's why I think the discharge was
11 granted.

12 THE COURT: But then the Court granted an
13 amendment to the complaint. We'll deal with that. Okay.
14 But I don't think that this testimony goes to that issue at
15 all.

16 MR. GAFFNEY: Okay. In that case I'll move on,
17 Your Honor.

18 BY MR. GAFFNEY:

19 Q Ms. Abraham, did you --

20 A Stuart.

21 Q I am -- I apologize profusely. Ms. Stuart --

22 A Yes.

23 Q -- did you ever receive notice of the defendant's
24 September 4th, 2012 bankruptcy case?

25 A No.

1 Q Did you ever receive notice of his November 20, 2012
2 bankruptcy case?

3 A No, sir.

4 MR. GAFFNEY: I have nothing further.

5 (Pause)

6 CROSS-EXAMINATION

7 BY MR. MCCAFFREY:

8 Q Good morning, Ms. Stuart.

9 A Good morning.

10 Q My name is Brian McCaffrey. I think you and I have met
11 before here in the courtroom and your attorney's office,
12 correct?

13 A I'm sorry. I didn't hear you.

14 Q You and I have met before here in the -- in this
15 courthouse?

16 A Yes. Yes. Yes, we have.

17 Q Ms. Stuart, including the \$75,000 that you say Stanley
18 Abraham is indebted to you for, you say that the total
19 amount owed to you in your complaint in the State Court and
20 in your complaint in this case is roughly \$1,118,000; is
21 that correct?

22 A Originally, yes.

23 Q Well, has it changed?

24 A It has changed because there were credit cards that
25 Thomas John used and did not pay me for a total of \$154,000.

1 And there was -- I had to borrow \$175,000. There were late
2 fees, bank fees and --

3 THE COURT: Hold it. Whose credit cards were
4 these?

5 THE WITNESS: Mine.

6 THE COURT: How did he use your credit cards?

7 THE WITNESS: Because he would borrow money from
8 the credit cards to begin with.

9 THE COURT: Well, he -- they were your credit
10 cards?

11 THE WITNESS: They were my credit cards.

12 THE COURT: Did you give them to him?

13 THE WITNESS: At first, yes. I loaned them to
14 him. But they were -- he kept using them and I didn't know.

15 THE COURT: And he ran up a balance of \$175,000?

16 THE WITNESS: \$154,000 and change.

17 THE COURT: On how many credit cards?

18 THE WITNESS: Thirteen.

19 THE COURT: You had thirteen credit cards --

20 THE WITNESS: Yes.

21 THE COURT: -- that you let somebody use --

22 THE WITNESS: Because I did not -- first, our
23 friend -- family friend, Sing Modi (ph), told me that Mr.
24 John is very credible. He has integrity. He's honest, and
25 other people were letting him use their credit cards and --

1 THE COURT: Credit card interest rate --

2 THE WITNESS: -- if I would do it.

3 THE COURT: -- is higher than a loan shark.

4 THE WITNESS: I didn't know.

5 THE COURT: So who borrows off of credit cards if
6 you're an honest, credible businessman? Did you ever think
7 about this?

8 THE WITNESS: No, sir. I just trusted Sing Modi
9 and Thomas John.

10 THE COURT: Did they ever pay you back that --

11 THE WITNESS: What -- they were paying it all
12 along and then they stopped paying it, and then all the fees
13 and they kept using the credit cards and they --

14 THE COURT: Didn't the credit card companies come
15 after you?

16 THE WITNESS: No. When I found out I started
17 paying because I did not want to damage my credit. See, I
18 did not use credit cards and at that time, you know --

19 THE COURT: So you don't believe in using credit
20 cards, but you had 13 credit cards.

21 THE WITNESS: Yeah.

22 THE COURT: Why did you have 13 credit cards?

23 THE WITNESS: Because they were given to me. They
24 used to send --

25 THE COURT: But you don't use credit cards. Why

1 did you take 13 credit cards?

2 THE WITNESS: But when I traveled, you know, we
3 would -- I would use a credit card for the plane ticket and
4 the hotel, but that was rarely, you know. If I took cash I
5 would pay cash. But I -- you know, those cards were given
6 to me because I had no debt and when I had debt I paid on
7 time. I had a good record. So I was entrusted with the
8 cards.

9 THE COURT: Okay. None of that -- I'll tell you
10 both. None of this makes any sense to me.

11 THE WITNESS: I know.

12 THE COURT: I don't know -- I'm not talking to you
13 right now.

14 I don't know what's going on here, but the theory
15 that somebody is putting out hundreds of thousands or a
16 million dollars with no interest, that \$175,000 is run up on
17 a credit card. Now I'm not sure what that has to do with
18 this debtor, but go ahead. I don't get it. I've seen a lot
19 of things and I know this doesn't make any sense. So I know
20 I'm not getting the right story from any of them. None of
21 this makes any sense.

22 THE WITNESS: Your Honor --

23 THE COURT: Ma'am, please don't. And I think the
24 727 is probably what I'm going to focus on, but let's
25 continue to go if you want.

1 MR. MCCAFFREY: I'll try to be as brief as
2 possible, but we would like to get a few points on the
3 record --

4 THE COURT: It's okay.

5 MR. MCCAFFREY: -- Your Honor.

6 BY MR. MCCAFFREY:

7 Q So I just want to clarify the question. Ms. John (sic)
8 you're -- various --

9 A Stuart.

10 Q -- venues in the State Court here you're suing for --
11 all right -- as you've added more fees roughly a \$1,200,000;
12 is that generally correct?

13 A Would you please state that?

14 Q \$1,200,000 is that close to the number you're saying
15 you're owed total?

16 A \$1,200,027 to Thomas John.

17 Q And --

18 A \$75,000 to Mr. Abraham.

19 Q Is the \$75,000 that you state Stanley Abraham owes you
20 included in that larger number?

21 A No.

22 Q It's above and beyond?

23 A It's -- yes.

24 Q Well, then, we have to take --

25 THE COURT: So you have a -- hold it one second.

1 You have a \$1,250,000 give or take in cash outstanding
2 today?

3 MR. GAFFNEY: It's not outstanding. I -- those
4 were my savings except for the --

5 THE COURT: No. But you sued somebody for a
6 million some odd dollars, that means you lost -- somebody
7 owes you a million dollars --

8 THE WITNESS: Yes.

9 THE COURT: -- which means you had to have a
10 million to give it to them.

11 THE WITNESS: Yes.

12 THE COURT: So you --

13 THE WITNESS: Loaned.

14 THE COURT: -- had a bank account that had
15 whatever it had in it --

16 THE WITNESS: Yes.

17 THE COURT: -- and it now has a 1,200,000 less --

18 THE WITNESS: Yes.

19 THE COURT: -- right?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Okay.

22 BY MR. MCCAFFREY:

23 Q I guess it will take a little time, but then I'm going
24 to have to ask you to be sure on the record, ma'am, that
25 this \$75,000 is in addition to the claims that you're making

1 against Thomas John because --

2 A Yes.

3 Q -- the record doesn't reflect that, ma'am. The State
4 Court filings here all reflect and the promissory note that
5 you signed -- and I'll go through them one by one -- all
6 reflect that the \$75,000 is included within the total
7 outstanding claim that you say you have. So before I go
8 through piece by piece of the amended complaint, the initial
9 complaint, the amended summons of the complaint, and
10 additionally amended complaint that's been amended five or
11 six times here and in the State Court are you sure that the
12 \$75,000 that you claim against Mr. Abraham is not included
13 in the total outstanding sum?

14 A The \$75,000 that Mr. Abraham owes me is separate from
15 the \$1,200,027.

16 MR. MCCAFFREY: I'll try to be as brief as
17 possible, but I have to do what I have to do on the record,
18 Your Honor.

19 THE COURT: What's -- but we have checks --

20 MR. MCCAFFREY: Yes, but --

21 THE WITNESS: Yes.

22 THE COURT: -- as part of the record going to your
23 client.

24 MR. MCCAFFREY: Yes, and I'll focus on that to --
25 for the Court, but --

1 THE COURT: Well, I'm trying to figure out what's
2 the difference whether she sues them both for the money to
3 you.

4 MR. MCCAFFREY: She can, but -- well, I'll make --

5 THE COURT: Unless you argue that --

6 MR. MCCAFFREY: -- this statement and then I'll go
7 ahead with the witness is that, for instance, the promissory
8 note that is part of Exhibit C which is the plaintiff's
9 response to the defendant's notice for discovery and I would
10 ask you --

11 BY MR. MCCAFFREY:

12 Q Would you please look at that, Ms. Stuart, Exhibit Z?

13 MR. GAFFNEY: She doesn't have it?

14 MR. MCCAFFREY: It's not there.

15 MR. GAFFNEY: None of the ones that you --

16 THE COURT: Well, the witness testified before
17 that there was no note, promise or any written agreement on
18 this debt.

19 MR. MCCAFFREY: Well, she's incorrect. The --

20 MR. GAFFNEY: No.

21 THE WITNESS: No.

22 MR. GAFFNEY: The promissory note he's referring
23 to has nothing to do with Stanley Abraham and I object to
24 representation that it does.

25 THE COURT: I'll look at which -- which exhibit is

1 it?

2 MR. MCCAFFREY: Your Honor, I'm trying to flow
3 along, but there will go --

4 THE COURT: No. Just tell me which exhibit it is.
5 Is it Exhibit C?

6 MR. MCCAFFREY: Well, it's Exhibit Z as in Zebra.

7 THE COURT: Z.

8 MR. MCCAFFREY: That would be in the -- yes. In
9 mine -- in the --

10 THE COURT: I got it.

11 MR. MCCAFFREY: -- defendant's --

12 THE COURT: I got it.

13 MR. GAFFNEY: It's about two-thirds of the way
14 through.

15 THE COURT: In the plaintiff's response --

16 MR. GAFFNEY: It looks like this, Your Honor.

17 MR. MCCAFFREY: About two-thirds of the way
18 through, yes. It's a -- well, page 55, Your Honor. They're
19 Bate stamped on the top left.

20 THE COURT: I don't have any Bate stamps
21 unfortunately.

22 MR. MCCAFFREY: It's not showing?

23 THE COURT: Not in Exhibit Z they're not.

24 MR. GAFFNEY: They're at the top left. Some of
25 them are over -- are printed over.

1 THE COURT: Oh, exhibit -- oh, okay. I've got
2 some. What number?

3 MR. MCCAFFREY: 55.

4 THE COURT: Okay.

5 MR. MCCAFFREY: 55 is a bit obscured, but --

6 MR. GAFFNEY: But 54 and 56 are legible.

7 THE COURT: This is between American Gardens
8 Company and Janet Stuart.

9 MR. MCCAFFREY: Right.

10 THE COURT: What does that have to do with this
11 case?

12 MR. MCCAFFREY: Well, American Garden and Stuart,
13 as Ms. Abraham (sic) testified a moment ago is Thomas Johns'
14 corporation, correct?

15 THE COURT: What does that have to do with this
16 debtor?

17 MR. MCCAFFREY: Your Honor, as I'll -- well, then
18 I'll --

19 THE COURT: I'm just asking.

20 MR. MCCAFFREY: Okay. Okay. Okay. Mr. Abraham
21 didn't receive the money. Ms. Stuart has had a long ongoing
22 relationship with his father-in-law, Thomas John.

23 THE COURT: That's fine. You can ask her about
24 that.

25 MR. MCCAFFREY: And the money that was given --

1 THE COURT: Sir, I got that.

2 MR. MCCAFFREY: Okay.

3 THE COURT: But what does the promissory note --
4 what evidentiary value is this promissory note in this case?

5 MR. MCCAFFREY: Well, one, that there is a
6 promissory note and that Mr. John did agree to pay back Ms.
7 Stuart and they are in agreement that he borrowed money from
8 her. And coupled with all of the other court filings from
9 Ms. Stuart, that \$75,000 is --

10 THE COURT: Okay. So for purposes --

11 MR. MCCAFFREY: -- encompassed.

12 THE COURT: -- of establishing that Mr. John or
13 his company owed Ms. Stuart under a June 4th, 2010 note
14 solely for the purpose of establishing that --

15 MR. MCCAFFREY: Well, that and beyond, but I need
16 time to go beyond, Your Honor, and it will be more clear
17 when I call Mr. Abraham.

18 THE COURT: Now you object to the introduction of
19 this for that purpose?

20 MR. GAFFNEY: For the purpose of demonstrating an
21 obligation from American Gardens Company or Thomas John, no.
22 There's no objection.

23 THE COURT: I'll let it in for that purpose. So
24 for that purpose and that purpose alone we'll let it in.

25 MR. MCCAFFREY: Well, do you -- does counsel

1 object -- I am trying to, you know, streamline it, but then
2 I have -- I -- she's making -- the record reflects that
3 through her own claims, her verified complaints, for
4 instance at --

5 THE COURT: Well, the complaint is part of my
6 record, isn't it?

7 MR. MCCAFFREY: Yes, Your Honor. But it's thick
8 and I need to --

9 THE COURT: Yeah.

10 MR. MCCAFFREY: -- hallucinate (sic) page by page
11 --

12 THE COURT: But that's part of this --

13 MR. MCCAFFREY: -- of the testimony.

14 THE COURT: -- record already.

15 MR. MCCAFFREY: We have Joint Exhibit I, that was
16 in the larger bounded trial book, Joint Exhibit I, which is
17 the verified complaint, Stuart versus John, Abraham and
18 Alexander. And if I reference to --

19 THE COURT: But just tell me what you're trying to
20 establish by all of this.

21 MR. MCCAFFREY: That the monies lent -- two
22 things. One that -- and ultimately Mr. Abraham was a
23 conduit momentarily and briefly from the -- of the \$75,000
24 it went to him and right out to his father-in-law, and I
25 have other evidence that I'm going to introduce when I call

1 him that has been objected to as the Citibank accounts.

2 THE COURT: Well, what he did with the money is
3 one thing. Is the issue whether Ms. Stuart knew that she
4 was loaning it to somebody else and never expected to be
5 repaid by this debtor?

6 MR. MCCAFFREY: That would be more precisely the
7 issue.

8 THE COURT: Ask her.

9 MR. MCCAFFREY: Yes. I mean --

10 THE COURT: That's the -- the issue you're --
11 there's no question your client got the money. Your
12 argument is he was a --

13 MR. MCCAFFREY: Conduit.

14 THE COURT: All right. Take that. What he
15 thought he was is probably less relevant than what Ms.
16 Stuart believed.

17 MR. MCCAFFREY: All right.

18 THE COURT: So that's where you want to get to.

19 BY MR. MCCAFFREY:

20 Q What did you lend -- you say you lent money to Stanley
21 Abraham twice, in July and in August of 2009.

22 A Yes.

23 Q The first time \$50,000, the second time \$25,000. What
24 do you think that loan -- you state it's a loan, correct?

25 A It is a loan.

1 Q And you expect it to be paid back?

2 A Yes.

3 Q When?

4 A September.

5 Q So you were going to lend him money in July and in
6 August and he was going to pay you back \$75,000 in
7 September.

8 A Yes.

9 Q What -- and how did you expect that to happen? What
10 expectations did you have, other than the fact that you
11 expected to be paid back, how did you expect to be paid
12 back? What -- what did you think the money was going to --
13 for?

14 A Exactly what he told me.

15 Q What was that exactly?

16 A That he wanted to expand his real estate.

17 Q Stanley Abraham told you that?

18 A Yes.

19 Q And he asked you for money?

20 A Yes.

21 Q When?

22 A July and in August.

23 Q Please tell me what transpired. Did he send you a
24 letter? Did he call you? Did he bump into you on the
25 street?

1 A Telephone call.

2 Q Stanley Abraham called you once? How many times?

3 A He called me about the middle of July. I wrote the
4 check in --

5 Q Well, what did he say when he called you?

6 A That he would like to borrow -- he knew I was lending
7 money to his step-father and he -- his father-in-law and he
8 would like me to loan him \$75,000.

9 Q And so you wrote a check?

10 A Yeah.

11 Q Was that the extent of the conversation?

12 A I asked him what for.

13 Q And he said?

14 A Real estate.

15 Q Real estate? Just those two words?

16 A He's expanding his real estate.

17 Q Three words. Anything else?

18 A That was enough for me. I knew him. I trusted him.

19 Q Expanding his real estate. Let's say for a moment that
20 Stanley John (sic) did not only receive, as we agreed by --
21 into his account, but kept and used that money. And let's
22 say he used that money for -- but we don't know what he used
23 the money -- if -- for a moment, just assuming that he did
24 keep it and use it for his own personal self, what --

25 MR. GAFFNEY: Objection. Lack of personal

1 knowledge. Speculation. Non-expert witnesses --

2 THE COURT: I don't even know what the question is
3 yet.

4 MR. GAFFNEY: Non-expert witnesses can't respond
5 to hypotheticals.

6 THE COURT: He hasn't finished the question yet.

7 MR. MCCAFFREY: I really need to do that.

8 BY MR. MCCAFFREY:

9 Q Were there things that you would have approved of and
10 things you would have disapproved of for his use of the
11 money?

12 A He said real estate.

13 Q Okay. So let's assume for a moment that he did use it
14 for real estate, what's your objection?

15 A The objection is that I was not repaid.

16 Q Is it possible that you not be repaid? Did you have
17 him sign a promissory note to you?

18 A No.

19 Q Did you take any other forms of collateral, anything to
20 secure future payment?

21 A No.

22 Q So you took a risk? That fair, ma'am?

23 A I expected to be repaid.

24 Q But is it fair --

25 A That's --

1 Q -- to say that you took a risk?

2 A Well, now, yes. At the time, no.

3 Q At the time you thought --

4 A I would be repaid.

5 Q -- there was absolutely no risk in that transaction?

6 A That's right.

7 Q A hundred percent that you would be repaid.

8 A Yes.

9 Q Is anything a hundred percent, ma'am?

10 THE COURT: Move on.

11 Let me make sure. Is it your argument that your
12 client got the money and used it, but used it in a manner
13 that was consistent with the understanding, or is it your
14 argument that the client never got it. He was just a
15 conduit. You first told me he was a conduit --

16 MR. MCCAFFREY: Correct.

17 THE COURT: -- right? So then he didn't get any
18 benefit or use any of these funds for his own benefit?

19 MR. MCCAFFREY: Correct. As I said, though,
20 thinking hypothetically that --

21 THE COURT: So that Mr. John could testify if he
22 were here that he received the 75,000?

23 MR. MCCAFFREY: Yes.

24 THE COURT: But he's not here?

25 MR. MCCAFFREY: No. Mr. John has, to be candid

1 with the Court other problems. I requested his presence and
2 so did my debtors. But --

3 THE COURT: Do we have an affidavit from him?

4 MR. MCCAFFREY: That wouldn't be admissible, Your
5 Honor, would it?

6 THE COURT: I'm asking.

7 MR. MCCAFFREY: No, I don't. I'm sorry.

8 THE COURT: Okay.

9 MR. MCCAFFREY: I don't do -- but, no, I do not.
10 And that's the reason, you know --

11 THE COURT: So your client is testifying that that
12 75,000 that went into his bank account immediately
13 transferred to his father-in-law?

14 MR. MCCAFFREY: Correct, Your Honor. And when I
15 call Mr. Abraham again I intend to introduce statements for
16 this large time period showing that very transaction; that
17 it went -- that the funds went -- that --

18 THE COURT: Well, I -- but the whole thing --

19 MR. MCCAFFREY: -- went right out.

20 THE COURT: Another part of this that makes no
21 sense. She is outstanding a million some odd dollars to the
22 father-in-law. Why -- if he wanted the money, he just could
23 have gotten it. Why did he need this debtor to -- to be in
24 this deal at all?

25 MR. MCCAFFREY: There seemed to be a time where

1 Mr. John, amongst his problems, had problems with bank
2 accounts and asked Mr. -- his son-in-law, Mr. Abraham, much
3 to his chagrin today, realizing the trouble that it's
4 caused, allowed him to use his bank account and take monies
5 from -- from different sources than --

6 THE COURT: Who was allowed to use whose bank
7 account?

8 MR. MCCAFFREY: Mr. John was allowed to use Mr.
9 Abraham's account. Well, use to the degree that Mr. Abraham
10 was assisting his -- Mr. John, his father-in-law, in certain
11 --

12 THE COURT: So Mr. Johns took money out of Mr.
13 Abraham's account?

14 MR. MCCAFFREY: -- financial transactions. I
15 don't say that he took it. Mr. Abraham wrote the checks to
16 him upon his request.

17 THE COURT: Which I don't understand because he's
18 telling me he never made any money for years.

19 MR. MCCAFFREY: Well, it wasn't -- because it
20 wasn't his money. But -- I mean, this goes back to 2009,
21 Your Honor. And the money was not his.

22 But also, Your Honor, I don't want to -- lest I
23 forget is that even if the Court were to conclude that Mr.
24 Abraham did retain Ms. Stuart's \$75,000, let's just say for
25 a moment he did, if he --

1 THE COURT: It's really simple. He's here.

2 MR. MCCAFFREY: -- if he invested in --

3 THE COURT: Sir --

4 MR. MCCAFFREY: -- the --

5 THE COURT: -- there's no jury. He's here. He
6 knows, did he take the money and use it or did he give it
7 all to this father-in-law. What's your argument, which one
8 of those two? It can't be both. Which one of those is the
9 right -- is the answer?

10 MR. MCCAFFREY: What I -- what I've stood by in
11 the beginning; that he -- it wasn't -- a week later it was
12 gone. It went right to his father-in-law. I have the
13 checks to prove it. It went out, out, out, out. It was
14 never his. He didn't use it. He didn't use it for his
15 Subway.

16 However, I am arguing in the alternative that even
17 if he did use it for this Subway it doesn't -- that doesn't
18 mean that he defrauded Ms. Stuart and that she has a right
19 for a claim of fraud against him. If she did lend him money
20 and --

21 THE COURT: That's kind of for me to decide. But
22 I'm trying to figure out what the argument -- is the
23 argument that -- Ms. Stuart claims that she gave your client
24 the money because he was going to use it in real estate,
25 period. The complaint says he didn't use it in real estate.

1 He used it to open a Subway --

2 MR. MCCAFFREY: Correct.

3 THE COURT: -- right?

4 MR. MCCAFFREY: Yes.

5 THE COURT: Did he open a Subway?

6 MR. MCCAFFREY: He did open a Subway.

7 THE COURT: Where did he get the money to open the
8 Subway?

9 MR. MCCAFFREY: Well, as he testified earlier he
10 borrowed it from his parents.

11 THE COURT: At the same time that he was giving
12 his father-in-law the money he borrowed it from him?

13 MR. MCCAFFREY: Well, it wasn't his money, Your
14 Honor. He didn't have the money.

15 THE COURT: Okay. Look, this is just consistent
16 with the rest of this. Let's move on. I mean, I don't know
17 what you guys are talking -- I can't figure out. I've sat
18 on cases for years. Nobody is telling the truth here,
19 nobody. Don't say anything. None of them. And if you guys
20 don't understand that, then you've got other issues.
21 They're not telling the truth. He's not and I don't think
22 she is. I don't know what they did, but it wasn't what I'm
23 being told.

24 So all I know is that the 75,000, part of a
25 million some odd thousand that somehow this woman decided to

1 loan to somebody for no interest for whenever they bother to
2 pay me back and you can use my 13 credit cards even though I
3 don't have any credit cards. And this gentleman who is
4 saying, I never make any money, but I manage to live and
5 then I rent my house out and I have my two cars, but my
6 father-in-law did it, but my father-in-law takes the money
7 out of my account so I don't use it.

8 I've sat on hundreds of these. This makes no
9 sense at any level, any level. Go on. Let's continue.

10 (Pause)

11 MR. MCCAFFREY: All right. Briefly, 14. Your
12 Honor --

13 BY MR. MCCAFFREY:

14 Q Ms. Stuart, I will draw your attention to the
15 supplemental summons and amended verified complaint in the
16 State Court action. It was defendant's Exhibit A at your
17 deposition. It is --

18 MR. GAFFNEY: Your Exhibit D, right?

19 MR. MCCAFFREY: Pardon me.

20 MR. GAFFNEY: It's your Exhibit D?

21 MR. MCCAFFREY: Say it again.

22 MR. GAFFNEY: She doesn't have that.

23 MR. MCCAFFREY: She doesn't have that? All right.

24 Let me --

25 THE COURT: Guys, it's 12:30. We'll take a break

1 till one. Come back then.

2 (Recess taken at 12:31 p.m.; resume at 1:13 p.m.)

3 THE CLERK: -- presiding.

4 THE COURT: Okay. Where are we?

5 Please take the stand again. You're still under
6 oath, ma'am.

7 THE WITNESS: Yes.

8 (Pause)

9 MR. MCCAFFREY: Ms. Stuart --

10 Your Honor, may I approach the witness? I have
11 what's marked as Exhibit D to the defendant's --

12 THE COURT: Okay.

13 MR. GAFFNEY: Your Honor, just before we go on,
14 the plaintiff has no objection to the admissibility of this
15 document. So as far as foundation we can skip that.

16 THE COURT: This is -- let's just make sure we --
17 this is the supplemental summons and amended complaint?

18 MR. MCCAFFREY: Yes.

19 THE COURT: Okay.

20 MR. GAFFNEY: This is in the State Court --

21 THE COURT: That will be admitted without
22 objection.

23 MR. MCCAFFREY: I'm going to use my copy with Ms.
24 Stuart as I --

25 CROSS-EXAMINATION (Resumed)

1 BY MR. MCCAFFREY:

2 Q Ms. Stuart, do you recognize this document? Well,
3 perhaps I'll retract that as far as the foundation has been
4 played and no objection --

5 This is a supplemental summons and amended
6 verified complaint, correct, Ms. Stuart, where you're the
7 plaintiff and you're suing Stanley Abraham and Thomas John
8 and Atima (ph) Alexander?

9 A Yes.

10 Q Okay.

11 MR. GAFFNEY: Your Honor, may I just give the
12 witness one of my copies so that counsel can return to the
13 podium?

14 THE COURT: Thank you.

15 (Pause)

16 BY MR. MCCAFFREY:

17 Q Ms. Stuart, please turn to page 3, paragraph 11. So
18 paragraph 11, it says, ma'am, and correct me if I'm wrong,
19 "In addition, the Defendant John requested that the
20 plaintiff issue checks in the names of the defendants, Atima
21 Alexander and Stanley Abraham," correct?

22 A Yes.

23 Q So -- and you're the plaintiff in this. And so you're
24 saying that Mr. John directed you to write checks in Stanley
25 Abraham's name, correct, at least in that statement?

1 A Yes.

2 Q And if you would please turn to page 7. At the bottom
3 of the page it's captioned, sixteenth cause of action. Do
4 you see it, ma'am? And beginning on the second sentence it
5 says, "on or about July 21" --

6 THE COURT: Do you have it, Ms. Stuart? Do you
7 have what he's talking about?

8 THE WITNESS: Yes. Yes, I do.

9 THE COURT: Okay.

10 BY MR. MCCAFFREY:

11 Q "On or about July 21, 2009 plaintiff loaned money by
12 check to the Defendant John and Stanley Abraham in the
13 amount of \$50,000"?

14 A Yes.

15 Q Does that refer to the \$50,000 check that you wrote to
16 Stanley Abraham?

17 A Yes, it does.

18 Q Okay. But you notice here, ma'am, it says that you
19 lent money to the defendants -- well, it says Defendant John
20 and Stanley Abraham. John and Stanley. So did you lend it
21 only to Stanley based on your conversations with him that he
22 was going to use it for real estate investments or did you
23 lend it to Stanley and Mr. John?

24 A I lent -- loaned it to Stanley Abraham and I think
25 during that time there might have been a check to Thomas

1 John as well --

2 THE COURT: I'm a little confused on that --

3 THE WITNESS: -- that July.

4 THE COURT: -- what counsel just pointed out to
5 you, the sixteenth cause of action.

6 THE WITNESS: Yes.

7 THE COURT: With the understanding that the monies
8 would be repaid with interest. You testified that you don't
9 charge interest.

10 THE WITNESS: I also testified that Thomas John
11 said he would pay me ten percent interest even though I did
12 not ask for interest.

13 THE COURT: So you do charge interest?

14 THE WITNESS: Well, if I was given the -- at the
15 beginning when I started loaning him money I did not ask for
16 interest. When he gave me the promissory note, I think it
17 was June 2nd, 2009 or '10, he said, you know, he'll give me
18 ten percent interest.

19 THE COURT: So there's no interest due. You would
20 say there's no interest due from this debtor on the 75,000.

21 THE WITNESS: There is no interest due.

22 THE COURT: He owes nothing. He would owe no --

23 THE WITNESS: No.

24 THE COURT: -- interest on that?

25 THE WITNESS: No. No. No interest, Your Honor,

1 to the Abrahams.

2 THE COURT: Okay.

3 BY MR. MCCAFFREY:

4 Q Ms. Stuart, earlier -- clarify that. You've loaned
5 over a million dollars you say and, quite frankly, in the
6 paperwork it seems you have to Stanley -- excuse me -- to --
7 yes, to Thomas John. He's an investor. Isn't the reason
8 you lent him the money to get a return on your money,
9 interest, a benefit above and beyond the initial investment?

10 A No. When I loaned the money I just wanted my money
11 back. I did not ask for interest. As I explained earlier,
12 our custom is not to charge interest. When we loan money
13 you pay back the amount you borrowed.

14 Q So you didn't want anything beyond just the base of the
15 amount of money back?

16 A I just wanted my money back, what I loaned.

17 Q And you will --

18 THE COURT: So -- hold on a second. So to you all
19 of these transactions have no tax consequences. Your tax
20 returns would never show any money being earned; is that
21 right?

22 THE WITNESS: That's right.

23 THE COURT: And the million dollars is all your
24 money? You didn't get that -- no piece of that was given to
25 you by anybody else?

1 THE WITNESS: No, sir. That's all my money.

2 THE COURT: You're not pooling anybody else's
3 funds here?

4 THE WITNESS: No, sir.

5 THE COURT: What do you do with the cash when it's
6 not loaned out, where does it sit?

7 THE WITNESS: It sits in the bank and --

8 THE COURT: Do you earn on it?

9 THE WITNESS: -- in investments.

10 THE COURT: Do you earn interest on your money?

11 THE WITNESS: I don't take any money out.

12 THE COURT: When it sits in the bank do you earn
13 interest on it?

14 THE WITNESS: Yes, but it's very little money I
15 have in the bank. What there were -- there were
16 investments.

17 THE COURT: Outside of the million-two that you
18 have outstanding to Mr. --

19 MR. MCCAFFREY: John.

20 THE COURT: -- John, how much money do you have in
21 the bank now?

22 THE WITNESS: On my checking account --

23 THE COURT: All accounts.

24 THE WITNESS: All accounts. I think I have about
25 ten or \$15,000.

1 THE COURT: And you have no brokerage accounts, do
2 you?

3 THE WITNESS: What are brokerage accounts?

4 THE COURT: What's a -- did you invest it -- do
5 you have any stocks --

6 THE WITNESS: No. I --

7 THE COURT: -- bonds?

8 THE WITNESS: -- stopped that.

9 THE COURT: So your total assets now other than
10 the money you've loaned to these people is \$15,000?

11 THE WITNESS: Yeah. Around about that, but I also
12 have, what do you call them, investments. I don't know how
13 to explain that. While I was working I had a Roth IRA.

14 THE COURT: A what?

15 THE WITNESS: A Roth IRA.

16 THE COURT: Right. How much is in your Roth IRA?

17 THE WITNESS: It was \$53,000. And that was
18 changed --

19 THE COURT: So you -- you had about a million-
20 three, a million-four in total liquid assets. You hand Mr.
21 John over time and this debtor close to a million-two with
22 basically no security, no interest in getting any interest.
23 You take a full risk as to whether they'll pay you, and then
24 it leaves you with about \$15,000. Is that what you're
25 testifying to?

1 THE WITNESS: Your Honor, the money I loaned to
2 them I did not see it as a risk because there were a lot of
3 real estate properties. So if I didn't --

4 THE COURT: But what would the difference be? You
5 didn't take an interest in any of these real estate
6 properties? You don't --

7 THE WITNESS: No, but if --

8 THE COURT: -- have a mortgage?

9 THE WITNESS: -- there were so -- if I took them
10 to court and they had to sell real estate to pay me --

11 THE COURT: So you gave somebody --

12 THE WITNESS: -- I felt that --

13 THE COURT: -- money without a note contemplating
14 having to sue them in court? Who would ever do that? I
15 don't -- I don't know.

16 THE WITNESS: Well, if I sued them in court and I
17 won the case and I didn't see why I wouldn't win the case
18 and they didn't think it will come to court. They would --
19 to sell a building --

20 THE COURT: And you had great faith in Mr. John,
21 correct --

22 THE WITNESS: Yes, sir.

23 THE COURT: -- and this debtor?

24 THE WITNESS: Yes.

25 THE COURT: And he needed 13 credit cards to run

1 up \$170,000 and you had great faith in the guy?

2 THE WITNESS: It was \$154,000.

3 THE COURT: Sorry. \$154,000.

4 THE WITNESS: Yeah.

5 THE COURT: And you had great faith in his ability
6 to repay you?

7 THE WITNESS: The first seven years he was paying
8 the credit cards, whatever he used. After that I found out
9 that, you know, they weren't paying it and that's why it ran
10 up the debt because nobody was paying.

11 THE COURT: All right. It's your testimony, not
12 mine.

13 BY MR. MCCAFFREY:

14 Q Ms. Stuart, page 8, please, under where it says,
15 nineteenth cause of action.

16 A Yes.

17 Q The second sentence says, "On or about August 3rd, 2009
18 plaintiff loaned money by bank wire to Defendant John in the
19 amount of \$25,000." Now that's of the same date, August
20 3rd, 2009 for the wire transfer that you say and I concede
21 is documented to have gone to Stanley Abraham. But in the
22 complaint you say you were lending the money to Mr. John.

23 A There were two wires, one to Thomas John and one to
24 Stanley Abraham.

25 Q Well, that hasn't -- that's not on the record before

1 the Court. There's --

2 A I know it's not --

3 Q -- only one wire on August 3rd.

4 A -- it's not said there. But on the same page, number
5 33, on the same date, August 3rd, 2009, Thomas John got
6 \$25,000. So one might have been a check and that's a
7 mistake here on --

8 Q Well, I do see that, ma'am. You're right. Paragraph
9 33 and 34 are identical. However, both of them state that
10 the money went to Defendant John.

11 A It's an error.

12 Q And I would just bring to your attention that at page
13 15 --

14 A Page 15.

15 Q -- is your oath stating that the contents of the
16 petition are true and correct?

17 A Yes.

18 Q Is that your signature?

19 A That's my signature. You know, there were many errors
20 on this that -- you know, it went back and forth to my
21 attorney to make corrections.

22 Q All right. I see many errors this morning.

23 MR. MCCAFFREY: I have no further questions for --

24 THE COURT: You say you sent this to your
25 attorney?

1 THE WITNESS: Yes. My attorney typed this up.

2 THE COURT: I thought I asked you this morning
3 whether you used a lawyer to do these transactions and you
4 said no?

5 THE WITNESS: A lawyer?

6 THE COURT: An attorney. I asked you if you used
7 an attorney on these transactions and you said no.

8 THE WITNESS: What do you mean by the
9 transactions, the money -- the checks I wrote there was no
10 attorney there, but in court --

11 THE COURT: Okay.

12 THE WITNESS: -- but suing them, yes, the --

13 THE COURT: All right.

14 THE WITNESS: -- attorney --

15 THE COURT: We have --

16 MR. MCCAFFREY: Actually, I have just one further
17 question, Your Honor.

18 BY MR. MCCAFFREY:

19 Q Exhibit Z as in zebra, that's in the joint --

20 A Do I have a Z? I don't think I have a Z.

21 (Pause)

22 THE COURT: I don't have a Z. Oh, yeah, I do.

23 MR. MCCAFFREY: That's in the defendant's, Your
24 Honor.

25 THE COURT: Yes, I do.

1 MR. MCCAFFREY: It was in --

2 THE COURT: It's plaintiff's response to
3 defendant's notice for discovery.

4 MR. MCCAFFREY: Yes.

5 (Pause)

6 BY MR. MCCAFFREY:

7 Q Do you recognize this letter?

8 A Yes.

9 MR. GAFFNEY: What page are you on?

10 MR. MCCAFFREY: That's at --

11 THE COURT: Hold it. Hold it. Hold it. Make
12 sure everybody's --

13 MR. MCCAFFREY: Yes.

14 THE COURT: -- got the same place.

15 MR. MCCAFFREY: 56, Bate stamp 56. It's the back
16 -- it's actually the back of the promissory note.

17 (Pause)

18 MR. MCCAFFREY: May I proceed, Your Honor?

19 THE COURT: Please.

20 BY MR. MCCAFFREY:

21 Q I don't want to belabor you, Ms. Stuart, with reading
22 this entire, what seems to be, two-and-a-half page letter,
23 but is it fair, correct me if I'm wrong, to say that this is
24 a letter that you wrote to Thomas John --

25 A Yes.

1 Q -- wherein you state that he owes you the money and at
2 the very first paragraph you stated at a \$1,118,364.94.

3 A Yes. At that time, June 14th, 2010.

4 Q Correct. Well --

5 A At that time.

6 Q -- I'm not arguing over the money with you, ma'am. My
7 question is you wrote this letter to Mr. John and to him
8 alone and you asked him to pay you back the money. Did you
9 ever write a letter to Mr. Abraham and ask him to pay you
10 back money?

11 A No, but I --

12 Q Did you --

13 A -- spoke with him --

14 Q When?

15 A -- and I told him I needed my \$75,000.

16 Q You spoke -- how did that come about?

17 A I don't understand what you're asking me.

18 Q Well, you said you spoke to him. I mean, in --

19 A Oh --

20 Q -- within the real estate office, did you have a --

21 A Yeah.

22 Q -- phone call?

23 A Real estate office.

24 Q And when was that, if you recall?

25 A That was that September 2009.

1 Q Any other -- other than bringing actions against
2 Stanley John, any other attempts at regaining the money that
3 you say that you lent to him?

4 A Yeah. Every time I saw him, at least two or three more
5 times, I asked him for my money.

6 Q What -- well, this will be my last question, but what
7 were the -- in general the nature of your -- you said when
8 you would see him. You saw him. What events caused you to
9 see him?

10 A I went to the office. He was there and I asked him for
11 my money.

12 Q And what did he say?

13 A Well, the first time he said he didn't know me. He
14 didn't owe me any money. He didn't know who I was. Later
15 on he said if I need money go sell some real estate or get a
16 job. Those were his words.

17 MR. MCCAFFREY: No further questions for Ms.
18 Stuart at this time.

19 THE COURT: Okay. Counsel?

20 MR. GAFFNEY: I don't think I need to redirect,
21 Your Honor.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you.

24 THE COURT: Do you have any further witnesses?

25 MR. MCCAFFREY: I would like to call --

1 THE COURT: It's his case.

2 MR. MCCAFFREY: I'm sorry.

3 MR. GAFFNEY: No, Your Honor. At this time the
4 plaintiff rests.

5 THE COURT: You rest? Who you going to call?

6 MR. MCCAFFREY: The defense would like to call Amy
7 Abraham.

8 THE COURT: All right.

9 THE CLERK: Can you please stand and raise your
10 right hand?

11 AMY ABRAHAM, WITNESS, SWORN

12 THE CLERK: Can you please say and spell your name
13 for the record?

14 THE WITNESS: Amy A-M-Y Abraham, A-B-R-A-H-A-M.

15 THE CLERK: Okay. You can sit down. Thank you.

16 THE WITNESS: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MCCAFFREY:

19 Q Ms. Abraham, you heard Ms. Stuart testify that she lent
20 \$75,000 to your husband. Do you know if your husband --
21 it's been established that your husband received it into his
22 bank account. Do you know if he retained the money, spent
23 it, kept it, used it to his or your benefit?

24 A No, he did not.

25 Q What happened to it?

1 A My father used it.

2 Q How do you know that?

3 A Because he's my husband. I know what he was doing with

4 --

5 Q Why would a transaction like that occur that Ms. Stuart
6 would give money into your husband's account and then it
7 would go to your father?

8 A At that time --

9 MR. GAFFNEY: Objection. Asking the witness to
10 speculate.

11 THE COURT: How can she know what Ms. Stuart was
12 thinking?

13 MR. MCCAFFREY: She may not --

14 THE COURT: I'll sustain the objection. Rephrase
15 it.

16 BY MR. MCCAFFREY:

17 Q How do you know -- so you -- so your testimony is that
18 your husband didn't retain the \$75,000?

19 A He did not use it. Yes.

20 Q And how do you know that?

21 A I know that because he's my husband. I would know if
22 he used the \$75,000. He told me that the money was coming
23 in so that my father could use it because at that time my
24 father could not use his account.

25 Q Pardon me?

1 A Because at that time when Ms. Stuart gave Stanley the
2 money my father could not use his own account.

3 Q Were there -- was your father conducting any other
4 transactions like that with your husband?

5 A During the time where he could not use his own account
6 there might have been a couple. It wasn't something that
7 happened often. At the time -- if we knew then what we knew
8 now we would have said no, but at the time, you know, we
9 didn't know something like this could happen.

10 Q Okay.

11 THE COURT: Does your father owe you -- does your
12 father owe you \$75,000?

13 THE WITNESS: Does he owe -- I mean, I don't look
14 at it like that, that he owes -- we never --

15 THE COURT: What did you give -- did you give it
16 as a gift? Why did you give him the money?

17 THE WITNESS: No. He used it for his business
18 purposes. He asked my husband to issue checks so that he
19 could use it --

20 THE COURT: Did your husband loan it to him, give
21 it to him? Was it --

22 THE WITNESS: No.

23 THE COURT: What?

24 THE WITNESS: My father told my husband that Ms.
25 Stuart, Janet, was going to wire some money or give him a

1 check and he needed that money. So Stanley gave him the
2 account information and Ms. Stuart did that, and in --

3 THE COURT: You're not answering my question. My
4 question is it was in your bank account.

5 THE WITNESS: Right.

6 THE COURT: Since you're testifying about what you
7 know --

8 THE WITNESS: Right.

9 THE COURT: -- because he's your husband --

10 THE WITNESS: Right.

11 THE COURT: -- did you expect to get that 75,000
12 back?

13 THE WITNESS: It was never -- we never considered
14 it our money. Why would we get the \$75,000 back?

15 THE COURT: Because it was in your bank account.

16 THE WITNESS: Right. And the purpose was to be
17 given to my father to begin with. We understood that. So
18 in our mind no one owes us \$75,000. That money was never to
19 be for us to begin with.

20 THE COURT: Then why was it in your bank account?

21 THE WITNESS: Because my father asked Janet to
22 issue it in Stanley's name because he couldn't use his own
23 account.

24 THE COURT: He couldn't use his own account?

25 THE WITNESS: Right.

1 THE COURT: Why couldn't he use his own account?

2 THE WITNESS: He ran into -- I mean, that's why
3 his business took a downfall and I -- from what I remember
4 at that time his bank account was frozen because it was
5 overdrawn. That's what I remember.

6 THE COURT: So do you think Ms. Stuart would have
7 loaned him \$75,000 if she knew his business was frozen and
8 not working?

9 THE WITNESS: I don't know. I don't know if she
10 knew all the details. I really don't know.

11 THE COURT: Well, but your husband was the one who
12 asked her for the money.

13 THE WITNESS: He never asked her for the money.
14 He --

15 THE COURT: So she's lying? She's --

16 THE WITNESS: She's -- one hundred percent. This
17 whole thing --

18 THE COURT: Okay.

19 THE WITNESS: -- is a lie.

20 THE COURT: So you guys --

21 THE WITNESS: He has never said more than hello --

22 THE COURT: I don't know why the trustee has never
23 gone after Mr. -- whatever this person's name is.

24 MR. MCCAFFREY: John.

25 THE COURT: I don't understand that, either. But

1 it was never scheduled. This receivable -- because I don't
2 know -- if it's not a receivable, then it was a gift
3 basically because the argument that it's not his with no
4 agency agreement, no power of attorney, no anything is as a
5 legal matter quite difficult.

6 So we have the money in his account. They're not
7 telling me why it went out. The theory that we inventoried
8 the money so -- because the father couldn't borrow it
9 directly leads one to conclude on that theory that they
10 conspired to defraud this woman of money because they didn't
11 tell her the truth about why they were taking it.

12 So I don't know where anybody's going here.
13 Again, I don't think any of you are telling the truth,
14 frankly, you, you or you. But working within that framework
15 none of this gets anyplace. Your argument is that the money
16 was in his account and low and behold he just gave it to his
17 father-in-law because something, but he then had money to
18 build a Subway because he borrowed it from his father-in-
19 law.

20 THE WITNESS: No. We didn't borrow money from my
21 father-in-law.

22 THE COURT: Where did you get the money to do the
23 Subway?

24 THE WITNESS: The majority was taken through a
25 loan through Capital One Bank.

1 THE COURT: Then what did you need the 75 -- you
2 didn't' need the 75,000?

3 THE WITNESS: We didn't. We didn't use her money,
4 Your Honor. That's what I'm trying to say. We never used
5 Ms. Stuart's money. We never asked for it.

6 THE COURT: So one of you is lying, either it's
7 you and the debtor or Ms. Stuart. One of you has to be
8 lying. Somebody's committing perjury here.

9 All right. One of the big mistakes people make is
10 you take little problems and you make them into real big
11 ones. If I find anybody committed perjury I'm going to send
12 it right to the U.S. Attorney's Office and then they'll be
13 on the other side of this building.

14 Keep going.

15 BY MR. MCCAFFREY:

16 Q Who was the primary breadwinner in your household in
17 the past six years?

18 A I would say the last several years it would be me.

19 Q All right. Did your husband earn -- have earnings in
20 2009 that you recall?

21 A Yes. In 2009, yes.

22 Q What was he doing?

23 A At that time he was doing real estate, a brokerage.

24 Q Okay. Were you using also?

25 A In 2009, yes, I was.

1 Q Okay. And 2010?

2 A For a portion of 2010, yes.

3 Q What -- what's that answer to, that you were working or
4 that he was?

5 A Well, 2010 is when he purchased the Subway. I believe,
6 if I remember correctly, early 2010 I was still working with
7 my father. And then I was collecting unemployment.

8 THE COURT: Well, how much did he borrow from Cap
9 One to start the Subway?

10 THE WITNESS: I think around 235 or \$240,000.

11 THE COURT: What did he show them as a reason they
12 would loan him money?

13 THE WITNESS: Because at that time we had
14 excellent credit. We owned a home and we had great credit,
15 and we had to personally guarantee the loan.

16 THE COURT: But what did you own that your
17 personal guarantee was worth anything?

18 THE WITNESS: I guess our house.

19 THE COURT: And it was not mortgaged?

20 THE WITNESS: Yes. We had a mortgage.

21 THE COURT: How much was the mortgage?

22 THE WITNESS: About \$325,000.

23 THE COURT: So you're saying Cap One loaned you on
24 a junior position to start a business with somebody who had
25 never been successful in any business?

1 THE WITNESS: Right. And then his parents also
2 co-signed the loan

3 THE COURT: Oh.

4 THE WITNESS: Stan's parents.

5 THE COURT: Okay.

6 MR. MCCAFFREY: And there are proceedings against
7 Alman (ph) Abraham, Stanley's father, credit basis in State
8 Court.

9 THE COURT: Capital One is a creditor in this
10 case.

11 MR. MCCAFFREY: No. Well, yes, absolutely, yes.
12 But they're also, as Ms. Abraham testified, Capital One is
13 also going after his father and mother because they're
14 guarantors on the loan.

15 BY MR. MCCAFFREY:

16 Q Also, was that the only -- was that the full sum that
17 it cost to start up a Subway?

18 A No. The down payment our families gave us.

19 Q How much was that approximately?

20 A Not my father. That was approximately I want to say
21 close to about \$100,000.

22 Q Where are you living now?

23 A With my in-laws.

24 Q Why?

25 A Because it was too hard to manage on just one income so

1 we're renting our home and we moved in with Stan's parents.

2 Q Why did you file bankruptcy?

3 A Because we couldn't keep up. We couldn't keep up with
4 our mortgage payments and all our other payments.

5 THE COURT: So there's no homestead exemption
6 taken here, correct?

7 MR. MCCAFFREY: It was, Your Honor.

8 MR. GAFFNEY: That's not correct.

9 THE COURT: What?

10 MR. GAFFNEY: There was.

11 MR. MCCAFFREY: It was.

12 THE COURT: How? They don't live there.

13 MR. MCCAFFREY: Well, they did at the --

14 THE COURT: It's a rental property.

15 MR. MCCAFFREY: They did at the time. They moved
16 --

17 BY MR. MCCAFFREY:

18 Q When did you --

19 A We moved May 2014.

20 THE COURT: Keep going.

21 MR. MCCAFFREY: I have no further questions for
22 Ms. Abraham.

23 THE COURT: Okay. Do you have any cross?

24 MR. GAFFNEY: Briefly.

25 (Pause)

1 CROSS-EXAMINATION

2 BY MR. GAFFNEY:

3 Q Ms. Abraham, do you have a bachelor's degree?

4 A Yes.

5 Q In what?

6 A Marketing.

7 Q From where?

8 A Hofstra.

9 Q When did you earn it?

10 A 2003.

11 Q Did you read the bankruptcy petition before it was
12 filed?

13 A I don't remember.

14 Q Did you sign the bankruptcy petition before it was
15 filed?

16 A If it required my signature, yes, I'm sure I did.

17 Q But you don't remember if you read it?

18 A I don't remember.

19 Q So would it be safe to say, then, that you don't
20 remember if you understood it either?

21 A If I don't remember I guess so. I guess you could say
22 that.

23 Q You said that you moved out of your house May of 2014?

24 A Correct.

25 Q That's when the tenants moved in?

1 A Correct.

2 Q How did you find the tenants?

3 A They were relatives of a friend of ours.

4 Q How long was the house on the market? How long were
5 you looking for tenants?

6 A About a few weeks, maybe a month or so.

7 Q When did you decide that you needed to rent the house?

8 A I would say about March of 2014.

9 MR. GAFFNEY: That's all I have.

10 THE COURT: What's the amount of the mortgage on
11 the house now?

12 THE WITNESS: I don't know the exact. It was
13 modified because we missed payments. I'm not really sure.
14 I know it went up from the original 325.

15 THE COURT: What's the house worth?

16 THE WITNESS: In today's market maybe about 450.

17 THE COURT: So if you don't have an exemption in
18 this house then the estate should have just sold it. That's
19 not a question. It's a statement.

20 Okay.

21 THE WITNESS: Do I step down?

22 THE COURT: You can step down.

23 Anybody else?

24 MR. MCCAFFREY: No, Your Honor.

25 THE COURT: You rest?

1 MR. MCCAFFREY: Yes.

2 THE COURT: All right, guys. Here's the story.

3 I'm going to get you a decision relatively quickly in this
4 case. My main focus is the 727 because if I can resolve the
5 727 I don't have to think about the 523. And, in fact, it
6 may be -- well, I guess if I find that there is no 727, then
7 I would drop down to the 523 and see if I believe that.

8 The problem that I have -- and I've made that
9 clear on the record -- is that I am very, very skeptical of
10 everything I've heard from either side. The 523 is
11 predicated on -- I know the debtor got money. I know he
12 received it. I know it went into his bank account.
13 However, there's no written agreement. There's no -- it
14 doesn't even seem to be an oral meeting of the minds,
15 leaving aside the parole evidence question, on the loan.

16 The debtor would have me to believe that he was a
17 conduit, which I'm not sure what that even means, and the
18 plaintiff would have me believe that she took essentially
19 100 percent of her savings, the only money she has to live
20 to support children and everyone else, handed it to a person
21 who appears to be a habitual criminal maybe, Mr. John,
22 running up credit cards and everything on her behalf, which
23 also makes no sense, somebody taking out 13 credit cards to
24 hand to somebody else.

25 So I don't know what to make of it. I'm telling

1 you. Originally, I had some view of this, but what I'm
2 going to try to do is the 727 is a relatively simple
3 question. There's no question these schedules were false.
4 There's no question they were misleading. There's no
5 question he signed them. There's no question that the
6 debtor knew what he did, both debtors. They signed them.
7 They're held to be responsible for them, whatever they now
8 claim.

9 And counsel's argument is that the requisite
10 intent, as you believe, necessary for that 727 has not been
11 proven, is not part of the record. I have the record. I'll
12 make that decision. That's really the only variable here.

13 On the 523, we know he got the money and then
14 everything seems to disappear. Do I believe the story that
15 he got it to give to his father-in-law, no. Absolutely not.
16 Do I believe he's made no money during all this period of
17 time? Absolutely not. But I don't know what he did, so --
18 and do I believe that Ms. Stuart in this cavalier manner
19 handed over a million some odd dollars to a person whose
20 office she was working whose own son-in-law testified that
21 they couldn't use his bank accounts because his properties
22 were frozen or whatever else is going on.

23 Do I believe they moved out of the house to put a
24 tenant in there to move to someplace else even though they
25 could afford to pay the mortgage straight through May 2014

1 or got a mortgage modification? Do I know what they gave
2 the mod -- to get the mortgage mod? If they showed he had
3 no income, I don't know how he got the mortgage mod. So I
4 don't know what they showed the bank. I don't know what
5 they showed the bank when they took the Cap One loan.

6 But all of that stuff is not in front of me. That
7 only comes into play with regard to what I think about the
8 intent of the parties.

9 So I'll get the record. We'll look at it. We'll
10 get you an answer probably within the next three, four
11 weeks.

12 MR. GAFFNEY: Do you want proposed findings and --

13 THE COURT: Yes.

14 MR. GAFFNEY: -- conclusions?

15 THE COURT: Yeah. Again -- yes. You -- what you
16 agree -- do it the way so what you agree on you show me and
17 what you disagree on you show me. It can be in one form.
18 Just get together. Most of the facts here you all agree on.
19 The consequence of those facts is what you disagree.
20 Nobody's disagreeing he got the money. Their view is he got
21 it as an agent and therefore shouldn't be responsible.
22 Yours is he got it.

23 The 727 is probably very little there that I need
24 from anybody because it's a question of whether the record
25 shows what you believe to be this requisite intent. I have

1 my own standard and we'll look at it. So I don't think I
2 need that much on that. But whatever you want.

3 So I'm not going to get to this for a few weeks,
4 so why don't you do -- get me these proposed findings of
5 fact. What do you want, a month?

6 MR. GAFFNEY: That seems reasonable. Yeah.

7 THE COURT: A month okay?

8 MR. MCCAFFREY: Yes.

9 THE COURT: All right. Pick a date, month. When
10 you get it to us, from the time we get it we'll get you
11 answer in a couple of weeks after that.

12 All right.

13 MR. MCCAFFREY: Yes, Your Honor.

14 THE COURT: Thank you.

15 MR. GAFFNEY: Thank you.

16 THE COURT: Court's adjourned.

17 (Proceedings concluded at 1:50 p.m.)
18
19
20
21
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25

I N D E X

T E S T I M O N Y

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E X H I B I T S

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri
Breach

Digitally signed by Sherri Breach
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SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber CERT*D-397

Date: March 23, 2015

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[& - 50,000]

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